

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2493 OF 2016

Rahul Milind Kadam	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket Nikam i/b. Aashish I. Satpute, Advocate for the applicant.
Mr. R.M. Pethe, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 14th December, 2016.

P.C.

Heard. This is an application under Section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 25.6.2016 in Crime No.369 of 2016 registered at Panchavati Police Station, Nashik for offences punishable under Sections 302, 307, 143, 147, 149 of the Indian Penal Code and under Section 3 read with Section 25 of the Indian Arms Act.

2) It is the case of the prosecution that on 23/06/2016, Rohan Shinde lodged a report at the police station that his brother Vivek was in love with a girl who was residing near the house of Sushant Vabale. Therefore, the boys residing in the said lane had animosity against his brother Vivek. They had also threatened the first informant and Vivek to

discontinue his acquaintance with the girl residing in the area of Sushant Vabale. On 18/06/2016, Kiran Pawar had obstructed the way of Vivek, had threatened him of dire consequences in the eventuality that he continue his love affair with the said girl.

3) According to the first informant, he was of the opinion that the disputes should be solved amicably and therefore on 23/06/2016 at about 11.30 a.m., he along with his friends Amit, Ismail, Rahul Tak, Sunny, Rizwan and Rahul were waiting near Pharmacy College, at Panchavati and they had sent a message for Kiran Pawar. At about 1.45 p.m., they were discussing the issues with Kiran Pawar and Vicky Varghat. That Sushant Vabale along with his friends Amol Patil , Rahul, Manoj and others came on the spot on their motorcycles. There was no prelude. They mounted assault upon the first informant and his brother. In the course of the verbal altercation Sushant Vabale had drawn his unlicensed revolver and was about to fire at the first informant. The first informant had presence of mind and he pushed Sushant Vabale. He still fired and the bullet had hit Rahul Tak on his head. Soon thereafter, people had gathered and the assailants had fled from the spot.

4) Upon perusal of the compilation of charge-sheet it appears that there is only one injury certificate i.e. of first informant which shows that

he had sustained a blunt trauma on his back. Similarly Amit Desle had also sustained blunt trauma. Post mortem notes would indicate that the deceased had sustained one surface wound which was caused by a firearm. There was an entry wound and the bullet was found embedded in the occipital bone. There are no other injuries on the person of the deceased. The cause of death is “*Cranio-Cerebral damage due to projectile of a firearm weapon which is sufficient to cause death in ordinary course of nature*”.

5) It is a case of single injury. It is true that the statement of all the witnesses would clearly indicate that present applicant was a member of the unlawful assembly and had participated in the incident. However, at this stage, it cannot be said that the applicant had knowledge that Sushant would suddenly draw the revolver and shoot at somebody. It *prima facie* appears that the common object of the unlawful assembly was to create terror and threaten the first informant and his group.

6) The learned APP submits that the applicant played an active role in the said incident. It is not denied that he was a member of the unlawful assembly. The charge-sheet is not filed against the accused under section 148 of the Indian Penal Code, although there is a specific allegation that all the accused were armed with a wooden log which can be described as a deadly weapon.

7. That the co-accused Amol patil to whom the similar role has been attributed has been enlarged on bail by this Court vide order dated 25.11.2016. By virtue of doctrine of parity, the applicant herein would also be entitled to be enlarged on bail.
- 8) Taking into consideration the papers of investigation, the overt act attributed to the present applicant, this Court is of the opinion that the applicant deserves to be enlarged on bail. However, it is made clear that the observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall report to the concerned police station on first and fourth Sunday of each month, commencing from 25/12/2016, till the framing of charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)