

*Ladda*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTIONBAIL APPLICATION NO. 2516 OF 2015
Kalpesh Chandrakant Sakpal Vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Siddheshwar B. Kalal i/by Deepak Bansode for the applicant.
Smt. Rutuja Ambekar, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.
DATE : 20th January, 2016

P.C.

1) The applicant is seeking bail in CR No. 403/2015 registered with Kandivali Police Station for the offence punishable under section 302 of the IPC.

2) The FIR is lodged by Amir Rais Quraishi on 6.11.2015 stating that on 6.11.2015, at about 1:15 a.m. he along with his friend Faizal Anis went to drink tea on New Link Road, Malad by his Hyundai Santro car No. MH-02-AP-769. They reached at Laljipada Police chowky at 2:05 a.m. The first informant witnessed that one person was inflicting blows on the face of other person with a bamboo like instrument. The complainant and his friend got down from their car. An auto-rickshaw which was behind the said car also stopped. The complainant, his friend and the driver of the auto-rickshaw rushed to the spot. In the meantime, the person who was assaulting the deceased ran away from the spot. The complainant has also given

the description of the said person in the FIR. In the premise, the FIR is lodged.

2) Heard the learned counsel for the applicant and the learned APP for the State and perusal of the documents amended to the application.

3) The learned counsel for the applicant submitted that in the FIR while giving the description of the accused, the age of the assailant is mentioned as 30 to 35 years, well built, having height of 5.5", wheatish complexion. He submitted that as a matter of fact, the applicant is hardly 18 years of age and is taking education. That the applicant has been arrested only on the basis of suspicion which emanates from the statement of the brother of the victim who has stated that on earlier occasion there were altercations between the applicant and the deceased. That the applicant is falsely implicated in the present crime.

4) The learned APP, on the other hand, produced for my perusal the papers of investigation. The incident in question has occurred on 6.11.2015 at about 2:00 a.m. The complainant has stated that one person was assaulting the deceased with bamboo like instrument. During the course of investigation, the police have recorded statements of three eye-witnesses on 8.12.2015 i.e. after a gap of thirty days. The eye-witnesses have stated that they saw the assault on the deceased Deepak Kadam wherein the accused no.1 initially inflicted blows with the aid of paver block on the forehead of deceased Deepak Kadam while the applicant and other co-accused namely Ajay had held the deceased Deepak Kadam. It appears to me all the three witnesses have not given any explanation about the

delay in recording their statements though they claim to be the eye-witnesses of the incident which took place on 6.11.2015. There is material discrepancy in the statements of complaint and the other witnesses. It is to be noted here that the investigating agency has not taken any pains to conduct the test identification parade of the applicant. In view of the above, the applicant has made out a case for his release on bail.

5) Hence, the following order:

ORDER:

- (a) The applicant shall be released on bail in CR No. 403/2015 registered with Kandivali Police Station on his furnishing P.R.bond of Rs.25,000/- with one or two solvent local sureties in the like amount;
- (b) After his release, the applicant shall attend the Kandivali Police Station on every Monday between 10:00 a.m. to 12:00 noon till the filing of the charge-sheet;
- (c) The applicant shall not tamper with the evidence and/or influence the witnesses;
- (d) The application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)