

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 59 OF 2017

Bhagwan Khandu Adhikari

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. A. H. H. Ponda i/b Mr. Ashish Raghuvanshi
Advocate for Applicant.

Mr. Sanjay S. Patil for original complainant.

Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 9th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 09/06/2016 in crime no. 126 of 2016 registered at Shahpur Police Station for offence punishable under sections 307, 120 (B) 109 of the Indian Penal Code and sections 4, 27 of the Indian Arms Act.

2) At the very outset, the learned counsel for the applicant submits that in

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crime no. 126 of 2016, there are in all 8 accused persons out of which 7 have been enlarged on bail by the Sessions Court. It is also submitted that by virtue of doctrine of parity, applicant deserves to be enlarged on bail as the actual assailants have been enlarged on bail by the Sessions Court.

3) It is the case of the prosecution that there was some political rivalry between present applicant and one Ganesh Kamdi . At the time of Grampanchayat elections, there was a quarrel between both groups. That the son of Ganesh i.e. the complainant was assaulted in the earlier incident. It is the case of the prosecution that the present applicant had hired people to assault the complainant. There is no cogent material besides the statement of the co-accused to show that the applicant had hired anyone much less the rest of the accused to eliminate Ganesh Kamdi.

4) The learned counsel for the applicant rightly submits that the statement of the co-accused cannot be taken into consideration. The statement is not recorded under section 164 of the Code of Criminal Procedure, 1973.

5) Be that as it may, applicant is in custody for more than 8 months. The actual assailants have been enlarged on bail and by virtue of doctrine of parity, applicant also deserves to be enlarged on bail. However, it is made clear that 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. 25,000/- with one or more local solvent sureties in the like amount.
- (iii) Applicant shall not reside in Shahpur Taluka till the conclusion of the trial.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)