

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 452 OF 2016

Bhagvan Khandu Kamble

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Meghana Gowalani Advocate for Applicant.

Ms. J. S. Lohakare APP for the State.

Mr. V. L. Kadam, API Kalwa Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 14th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested in December 2014 in crime no. 659 of 2014 registered at Kalwa Police Station for offence punishable under sections 143, 147, 148, 149, 302, 307, 326, 323, 324, 506 (2) of Indian Penal Code and section 4 (25) of the Arms Act.

2) It is the case of the prosecution that on 16/12/2014, Sayali Kadam lodged a report at the police station alleging therein that on 15/12/2014, Shankar Shinde was assaulting her husband Shankar Kadam. She and her

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sister had rushed to the spot and separated the quarrel. On 16/12/2014 at about 2.00 p.m., Shankar Shinde along with present applicant and others had been to her house and assaulted her husband with chopper and other deadly weapons. Present applicant happens to be the maternal uncle of Shankar Shinde. Her husband had succumbed to the injuries. She lodged a report, on the basis of which crime no. 659 of 2014 was registered. The supplementary statement of the complainant was recorded on 23/01/2015 and she had stated in her supplementary statement that Shankar Shinde assaulted her husband. Present applicant is maternal uncle and according to her in the light of the bulb she had seen the present applicant exhorting Shankar Shinde as he happens to be maternal uncle of Shankar Shinde. The learned counsel for the applicant submits that there is discrepancy and variance in the statement of the first informant who has posed as an eye witness, that other eye witnesses have not attributed any specific role to the present applicant. That one of the co-accused namely Vinod Ramesh Coundar has been enlarged on bail by this Court vide order dated 28/09/2016 and hence, by virtue of doctrine of parity also, applicant deserves to be enlarged on bail.

3) As against this, the learned APP submits that the name of Vinod was

not mentioned in the F.I.R. whereas in the F.I.R. the name of the present applicant is not only mentioned but a specific role has been attributed to him and it is specifically stated that he was armed with a chopper and hence, he does not deserve to be enlarged on bail.

4) The learned APP has placed on record the Rozanama of Sessions Case No. 368 of 2015 pending before the Sessions Court at Thane. It is seen from the Rozanama that all the accused are not being produced before the Court on the stipulated dates and therefore, the trial is delayed.

5) Upon perusal of the Rozanama it is further seen that on 05/12/2015, 19/12/2015, 02/01/2016, 30/01/2016, present applicant was not produced before the Court. Applicant was produced on 12/02/2016, however, accused nos. 10 & 11 were not produced. Accused no. 9 had filed an application for bail. On 26/02/2016, the learned Sessions Judge had issued a production warrant in respect of accused nos. 10 & 11 as well as accused no. 9. Present applicant was produced before the Court on 10/03/2016 and 18/03/2016. On 01/04/2016, 13/04/2016, 27/04/2016, present applicant was not produced before the Court and on 11/05/2016, presenting officer was on leave. On 25/05/2016, 08/06/2016, 08/07/2016, 21/07/2016, 03/08/2016, 16/08/2016,

26/08/2016, 08/09/2016, 20/09/2016, 03/10/2016, 17/10/2016, 05/11/2016, 29/11/2016, 09/12/2016 and thereafter, till today, accused are not being produced before the Court.

6) This Court has noticed everyday that accused are not being produced before the Court and are languishing in jail for more than 3 years only because they are not being produced before the Court on the stipulated dates.

7) The learned counsel for the applicant rightly submits that police authorities would be responsible for protracting the trial.

8) It is true that this would hamper the very administration of justice as trials are delayed because of police department. This Court has given several reminders to the police department in respect of the said contingency due to which trials are delayed and protracted. It appears that the department discriminates amongst the accused persons and in all probabilities have vested interests.

9) Application stands dismissed on merits.

10) However, the learned Sessions Judge shall ensure that henceforth, all the accused are produced before the Court on each and every date in Sessions Case No. 368 of 2015. The learned Sessions Judge shall exercise powers and

would be at liberty to pass appropriate orders against the police and jail authorities.

11) The learned counsel for the applicant has put in best of efforts to espouse the cause of the applicant. Her professional fees are quantified to the tune of Rs. 2000/- to be paid to her within 3 months from today.

(SMT. SADHANA S. JADHAV, J.)