

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO. 714 OF 2017**

Sandip @ Sandipa @ Jaikul Namasha Bhosale. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

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Mr. Rahul K. Dhaygude, advocate for Applicant.

Ms. S.S. Kaushik, APP for State.

Mr. S.D. Bhalekar, ASI, Bharti Vidyapeeth Police Station, Pune.

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**CORAM : SMT.SADHANA S. JADHAV,J**

**DATE : DECEMBER 20, 2017**

**P.C.:**

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 23/4/2016 in Crime No. 121 of 2016 registered at Bharati Vidyapeeth Police Station, Pune City for offence punishable under section 302, 460,

342, 457, 380 read with section 34 of the Indian Penal Code and under section 37(1) and 135 of the Maharashtra Police Act.

3 It is the case of the prosecution that on 3/4/2016 Shivaji Takale had lodged a report at the police station alleging therein that in the intervening night the house of the neighbours of first informant was locked and thereafter, 2 unknown persons had broke open the door of the house of the complainant and had stolen Rs. 8,000/- to 10,000/- from the cupboard and had assaulted his brother Tanaji with an iron rod on his face and head. The injured had succumbed to the injuries instantly. That the first information was lodged against unknown person.

4 In the adjoining bungalow of Shri Sathe there was a CCTV camera. The police had seen the footage and had noticed that one person could be identified on the basis of the way he walked although the faces were not clearly visible. That the incident had occurred on 3/4/2016. The police had received a secret information that the accused who was seen in the CCTV footage was at the particular

place. The police had apprehended the said person and upon enquiry the present applicant was arrested. That the police had recorded statement of witnesses who had seen the accused on the earlier occasion. On 3/4/2016 itself the police had recorded statement of one Mayur Dhapte, who had informed the police that on the same day at about 3.30 a.m. they had seen two persons carrying weapons like steel rod(Tommy) and were proceeding towards Sathe bungalow. Soon thereafter, the incident had occurred.

5 The learned Counsel for the applicant submits that the case rests on circumstantial evidence. The applicant has been falsely implicated. That the police do not have transcript of CCTV footage and therefore, the applicant who is in custody for more than 1 and half years, deserves to be enlarged on bail.

6 As against this, learned APP submits that the applicant has criminal antecedents. He is absconding accused in Crime No. 210 of 2008 registered at Virar Police Station under section 395 of the Indian Penal Code and MCOC Act. Crime No. 314 of 2008 is registered

against the applicant in Nalasopara Police Station under section 307, 427 read with section 34 of the Indian Penal Code and also Crime No. 17 of 2006 is registered against the applicant at Dahiwadi Police Station, Satara for offence punishable under section 395 of the Indian Penal Code.

7 The learned Counsel for the applicant submits that it is true that the applicant is shown as absconding accused in MCOCA Special Case No. 3 of 2009. However, according to him, other accused have been convicted for offence punishable under section 395 and 397 of the India Penal Code and are acquitted under the provisions of MCOCA. It is also submitted that although the accused is in custody since 22/4/2016 he has not been arrested in MCOCA Special Case No. 3 of 2009 for the reasons best known to the police.

8 The learned APP had submitted that the applicant has been identified by two witnesses in the test identification parade.

9      Upon perusal of the records and proceedings, it appears that the applicant has criminal antecedents. In the present case also there is ample material to indicate that the applicant is involved in the homicidal death of Tanaji. In these circumstances, the applicant does not deserve to be enlarged on bail.

10    However, it is made clear that the observations made hereinabove are prima facie in nature and restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The trial Court shall not be influenced by the above observations at the time of trial. The same be decided on its own merits.

11    The Application being sans merits stands rejected and disposed of accordingly.

**(SMT. SADHANA S. JADHAV,J)**