

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 631 OF 2016

Mukesh Ramnarayan Gupta Alias ChutkaApplicant

V/s.

The State of MaharashtraRespondent

Mr. S. V. Marwadi i/b Mr. Kartik Garg Advocate for Applicant.
Mr. Ajay Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 1st FEBRUARY, 2017.

PC :

- 1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 13/07/2015 in crime no. 234 of 2015 registered at Kandivali Police Station for offence punishable under sections 393, 394, 397, 506 (2), r/w 34 of the Indian Penal Code, Section 4 & 25 of the Indian Arms Act and Sections 37 (1) (A) of Maharashtra Police Act.
- 2) It is the case of the prosecution that on 07/07/2015, Rajesh Gupta was admitted in Ocsar Hospital in an injured condition. It was a medico legal case and therefore, his statement was recorded. He has disclosed to the police that he is a vegetable vendor. On 07/07/2015, in the early hours at about 2. 15 am,

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he had been to Iraniwadi Road to purchase vegetables in the auction. That at about 2.30 a.m., when he was passing in front of Manish Medical, he was accosted by two unknown persons. They had tried to take away the money which he was carrying. In the meanwhile, a rickshaw had come to the spot and two persons alighted from the said rickshaw. One of them was carrying a sickle. He had handed over the sickle to the third person who had assaulted the complainant. He had sustained injury on his right hand. He was then assaulted on his head. In order to rescue himself, he started running and had reached the house of his brother-in-law Harishchandra Gupta and at that time, the accused persons had fled from the spot. He had given descriptions of the persons who had attacked him.

3) On 07/07/2015, Investigating Officer had recorded the statement of Harishchandra Gupta who was the first person to whom the complainant had met after having been assaulted. He has disclosed to the police that on 07/07/2015, at about 3.00 a.m., his brother-in-law Rajesh had come to his house in an injured condition. When he opened the door, he had seen Babu Chikna accompanied by Sajid Shaikh, Pankaj and Mukesh.

4) It is apparent on the face of record that Harishchandra knew the persons

who had allegedly assaulted Rajesh. In the course of investigation, test identification parade was conducted and it is the case of the prosecution that all accused persons have been identified. In view of the statement of Harishchandra Gupta, test identification parade would lose its significance.

5) Be that as it may, applicant has no criminal antecedents whereas co-accused namely Sallauddin @ Babbu @ Chikna, Mainuddin Qureshi, Rahul Jaiswal @ Pankaj & Sajid Shaikh have criminal antecedents and hence, they shall not claim parity with the present applicant. Taking into consideration the papers of investigation, statements advanced across the house and the role attributed to the present applicant, this court is of the opinion that applicant deserves to be enlarged on bail. It is reiterated that co-accused shall not claim parity. 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 at Kandivali till the conclusion of trial.

(iv) Applicant shall not leave Mumbai without prior permission of the Court.

(v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)