

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 843 OF 2016

Jogendra Ayodhyaprasad Badai ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 87 OF 2017

Mr. Malkappa Dhulappa Koli ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Shyam Kalyankar, Advocate for the applicant in BA No.843 of 2016.
Mr. Niranjana Mundargi i/b. Mr. Kunal D. Ambulkar, Advocate for the
applicant in BA No.87 of 2017.
Ms. P.P.Shinde, APP, for the State.
Mr. R.Sawant, PI, Rafi Ahmed Kidwai Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 15th March, 2017.

P.C.

Heard. These are the applications under Section 439 of Cr.P.C.
The applicants herein are arrested on 17.9.2015 in Crime No.349 of 2015
registered at Rafi Ahmed Kidwai Marg Police Station. The investigation is
completed and charge-sheet is filed against the present applicants in
November, 2015 for the offences punishable under Section 307 read with
Section 34 of the Indian Penal Code and under Section 37(1) of the Indian
Arms Act.

2. It is the case of the prosecution that on 17.9.2015, one Haresh

Shivalkar lodged a report at the police station that he happens to be an artist and a social worker and is a Shakha Pramukh of Shiv Sena Party. He is residing in the transit camp and works for the betterment of the slum-dwellers. According to him, on 29.10.2015, the slum-dwellers had received contaminated water and therefore he lodged a complaint with the developer Vimal Builders. That there was verbal altercation. The Manager of the builder Mr. Sakhare had already informed the police about the same. On 1.9.2015, Mr. Sakhare had given notice to the slum-dwellers to vacate their tenements as the said land was demarcated for development. That the people hired by the developer had become violent and aggressive. Hence, there was altercation. On 7.9.2015, the complainant had received an Inland letter in their office giving threats and demanding Rs.5 lakhs. That on 16.9.2015, at about 11.30 p.m., when the first informant was in his house along with two other social workers i.e. Supriya Wapikar and Raju Jadhav, three unknown persons had entered into the house. They had asked Supriya and Raju to leave the house and thereafter had mounted assault upon the first informant with a sword. One of the assailants had informed the first informant that he is working with a gangster Chhota Rajan. That the complainant was assaulted. Two persons were standing outside the house. The persons who had assaulted the complainant had demanded revolver

from one of his associates. In the meanwhile, the first informant had fallen on the ground and suddenly all the three persons had fled from the spot.

3. The injured was taken to the hospital by Raju Jadhav. The certificate annexed to the charge-sheet shows that the informant was examined at mid-night with history of assault by sword. He had sustained five injuries. Two abrasions were also described as grievous injuries. There were two stab injuries on thigh. The dimension did not show that the injuries were muscle deep. There was one stab injury on the Epigastric region admeasuring 10 x 1 cm. They were described as contused lacerated wounds. The informant was discharged on 21.9.2015. The discharge summary shows that all the injuries were non-penetrating injuries. There were superficial injuries.

4. Upon perusal of the compilation of charge-sheet, it appears that on 25.9.2015, the first informant was called to the police station and was shown the weapons which were seized from the present applicants and the first informant had identified the weapons. Needless to say that on 25.9.2015, the accused were in police custody in the same police station where the first informant was called for identifying the weapons. It is further pertinent to note that on 21.10.2015, test identification parade was conducted. The first informant had identified the applicant in Criminal

Application No.843 of 2016. One Tarun Nagda was also called on the same day and he had failed to identify the applicant in Criminal Application No.843 of 2015. The first informant had also identified the applicant in Bail Application No.87 of 2017. Tarun Nagda had also identified him.

5. The learned counsel for the applicant rightly submits that on 21.9.2015, when the first informant had come to the police station to identify the weapons, the possibility that the accused persons shown to him cannot be ruled out. Moreover, the first informant had identified both the applicants although it is his specific case that he was assaulted by only one person with the sword. The supplementary statement of both the witnesses i.e. first informant and Tarun Nagda has been recorded. The learned counsel for both the applicants submit that the material in the nature of test identification parade is only a corroborative piece of evidence and as on today, they are able to demonstrate that the accused-applicants were shown to the identifying witnesses in the police station. A serious doubt has been raised as to why Raju Jadhav and Mrs. Wapikar were not called for test identification as they were the best persons to identify the assailants as they were present at the time when the incident occurred and they were asked to leave the room of the first informant. The applicants have been in custody for almost 18 months.

6. On 30.1.2017, the learned APP, upon instructions, submitted that in the present case, charge was framed and hence it would not be appropriate to consider an application under Section 439 of Cr.P.C. The respective counsel had pointed out the said fact and had placed on record the Roznama which clearly indicated that the accused were not produced before the Court for the purpose of framing of charge and, therefore, charge was not framed. It was also submitted by the learned APP, upon instructions, that the applicant in Criminal Application No.843 of 2016 has criminal antecedents and therefore does not deserve to be enlarged on bail as he has committed the present offences while on bail in the other matters. The said submission was also objected by the learned Counsel for the applicant in Criminal Application No.843 of 2015 and, therefore, this Court, to put the issue at rest, had called upon the PI of R.A.K. Marg Police Station to file an affidavit to that effect. Today, the affidavit is taken on record and marked "X" for the purpose of identification. It is stated in the affidavit that there were cases against the present applicant and that he has been acquitted in all three cases. It is also submitted that the brother of the present applicant i.e. Jogendra Badai has criminal antecedents and due to similarity in name and due to inadvertence the offence of Jogindra Badai were shown in the report as antecedents of the present applicant, the

concerned officer has tendered his apology for the same.

7. The Hon'ble Supreme Court in the case of **Hussain and Anr. vs. Union of India (Criminal Appeal No.509 of 2017)**, observed as follows :-

“Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. There are obstructions at every level in enforcement of right of speed trial – vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. Presiding Officer of a court cannot rest in the state of helplessness.”

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“(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;
(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;
(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

(v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal (supra).”

8. After the order dated 30.1.2017, the accused were produced before the Court. Accused No.1 i.e. applicant in Criminal Application No.87 of 2017 had filed an application for medical treatment. The learned Court had directed to extend the medical treatment to the accused applicant and submit compliance report. Before the accused were produced in Court, the learned Sessions Judge had adjourned the matter as the accused was not produced when the matter was called out. Hence, the next date is 24.3.2017.

9. Taking into consideration the material collected against the present applicant, the submissions advanced across the Bar and the fact that charge-sheet is filed in the present case in November 2015, this Court is inclined to grant bail. However, the observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for quashing application, discharge application or at the time of trial.

ORDER

(i) The applications are allowed.

- (ii) The applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- and one or more local solvent sureties in the like amount.
- (iii) The applicants shall not enter into the jurisdiction of R.A.K. Marg Police Station till conclusion of the trial.
- (iv) The applicants shall mark their presence before the trial Court in Sessions Case No.694 of 2015 on every stipulated date.
- (v) Upon failure to attend any two consecutive dates, the learned Sessions Judge shall issue non-bailable warrant against the applicants and take them into custody.

Both the applications stand disposed of.

(SMT. SADHANA S.JADHAV, J.)