

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1195 OF 2016

Sachin Uttamrao Shinde	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Priyal G. Sarda, Advocate for the applicant.

Ms. J.S. Lohokare, APP, for the State.

Mr. Pandit Thorat, Sr. P.I. Andheri Police Station present.

CORAM: SMT. SADHANA S. JADHAV, J.
DATE : 25th January, 2017.

P.C.

The learned counsel for the applicant has placed on record a letter addressed to the mother of the applicant, wherein it is specifically mentioned that due to misunderstanding he had written a letter stating that he does not wish to continue with the Vakalatnama of the learned Counsel Shri P.G. Sarda. The said letter is taken on record and marked "X" for the purpose of identification.

2. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 11.8.2015 in Crime No.315 of 2015 registered at Juhu Police Station, Mumbai, for the offence punishable under Section 307 of the Indian Penal Code.

3. It is the case of the prosecution that on 11.8.2015, Arun Dewar and

Vyankateshwaram, who are residing at Nehru Nagar Zopadpatti, Vile Parle (West), Mumbai, were standing near their house when they were informed by Prakash Sakpal that at about 12 midnight, Sachin had raised quarrel with him and he had assaulted him by means of a weapon on his abdomen. It is alleged that Prakash was assaulted by the present applicant with a deadly weapon. It is further alleged that the first informant Arun Dewar had taken Prakash to Cooper Hospital and thereafter lodged a report at the police station on the basis of which Crime No.315 of 2015 is registered against the applicant for the offence punishable under Section 307 of IPC. The investigation is completed and charge-sheet is filed.

4. The learned APP submits that the applicant has written a letter through Jail to the Sessions Court seeking enlargement on bail during the pendency of this application and, therefore, he should not be enlarged on bail.

5. As against this, the learned counsel for the applicant has vehemently submitted that the present application is filed on 17.6.2016 and is pending since then. It is also submitted that the applicant, while in jail has no knowledge about the proceedings before this Court. The matter had not reached the stage of hearing at least till 6.9.2016 and on 28.9.2016, the hearing of the application was adjourned at the request of the learned APP.

It is also submitted that the application had not reached the stage of hearing at least till 5.1.2017 and, therefore, out of frustration the applicant has addressed a letter to this Court as well as to the Sessions Court. The learned APP also submits that the applicant is being prosecuted in two offences i.e. in Crime No.232 of 2005 registered at Juhu Police Station for the offences punishable under Sections 324, 323 read with Section 34 of IPC and Crime No.129 of 2009 registered with Tilak Nagar Police Station for the offences punishable under Section 394 read with Section 34 of IPC and, therefore, he does not deserve to be enlarged on bail. It would not be appropriate to consider the criminal antecedents of an accused in each and every case. That the facts of the case also have to be taken into consideration.

6. Perused the papers of investigation. It appears that on 11.8.2015 the injured Prakash had gone to Cooper Hospital by himself and had disclosed to the doctor that he has sustained stab injury over abdomen at the hands of some unknown person under the influence of alcohol. Thereafter from Cooper Hospital, he was referred to Bhabha Municipal Hospital on the same day. There also he had made the history of assault by unknown person and that he had gone to Cooper Hospital on his own. He was discharged from K.B.Bhabha Municipal General Hospital on 19.8.2015.

7. The learned counsel for the applicant rightly submits that the first informant has stated in the report that he had taken the injured to Cooper Hospital. The same is falsified by the certificate issued by Cooper Hospital. It appears from the records that on 25.8.2015, the injured was examined at Cooper Hospital. The certificate is issued on 16.10.2015 at the request of Juhu Police Station. It is surprising that the certificate issued by Cooper Municipal General Hospital, Juhu, indicates that the patient was examined on 25.8.2015 at 1.25 a.m. There are lacunas in the investigation. In the proforma under Section 154 of Cr.P.C. also Section 326 is overwritten as 307.

8. The learned counsel for the applicant, upon instructions, submits that the applicant is residing at Virar, Dist. Palghar during the pendency of the trial and attend all dates before the trial Court in Sessions Case No.301 of 2015 pending before the Sessions Court at Dindoshi.

9. Be that as it may, the applicant has been in custody for more than 17 months and hence, he deserves to be enlarged on bail upon imposing certain stringent conditions.

10. It is made clear that the application pending before the Sessions Court at Dindoshi shall be disposed of in view of the disposal of the present application.

11. Office to communicate this order to the concerned Court forthwith.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on his furnishing P.F. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not reside in Muimbai during the pendency of the trial.

Application is allowed in the above terms and stands disposed of.

(SMT. SADHANA S.JADHAV, J.)