

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL BAIL APPLICATION NO. 1239 OF 2016**

|                          |     |            |
|--------------------------|-----|------------|
| Dashrath Rajaram Thakare | ... | Applicant  |
| Vs.                      |     |            |
| The State of Maharashtra | ... | Respondent |

Mr. Raviraj R. Paramane, Advocate for the applicant.  
Ms. Veera Shinde, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV, J.**  
**DATE : 4<sup>th</sup> January, 2017.**

**P.C.**

Heard. This is an application under Section 439 of Cr.P.C.  
The applicant herein is arrested on 20.5.2015 in Crime No.77 of 2015 registered at Murbad Police Station for the offences punishable under Sections 302, 324, 504 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 20.5.2015, one Chandrakant Wagh lodged a report at the police station alleging therein that his nephew Gurunath was married to Bayadi but he had taken Alka as a second wife and was residing with Alka at Chinar Farm House. Alka happens to be the sister of the present applicant. It is the prosecution case that on 19.5.2015 at about 8 p.m. there was a quarrel between Bayadi and Alka. Alka had sustained an injury to her arm. To pacify the quarrel, the

father-in-law of Gurunath i.e. father of Bayadi and others had been to his house. The applicant had also been to Chinar Farm House to see that the quarrel is settled mutually. On 20.5.2015, in the morning at about 10 a.m., again there was a quarrel between Alka and Bayadi. The relatives had gathered at Chinar Farm House. That the present applicant, in order to protect his sister, had also been to her house. The passions between both the groups had flared and there was altercation. According to the first informant, in the said altercation, the present applicant along with Kisan and Gulab had assaulted Bhagubai with bricks and stones. She had sustained injuries. At that stage, Damu (deceased) had intervened and it is alleged that the applicant had drawn a knife which was concealed in the shoes and had stabbed Damu. It was a fatal injury and Damu had collapsed to the ground. Damu was shifted to his own house. Thereafter, the first informant and the wife of Damu had called upon the relatives and disclosed the incident. They then approached the police station and lodged report.

3. On the basis of the said report, Crime No.77 of 2015 was registered at the police station.

4. The papers of investigation would indicate that on the same day, at about 11.15 p.m., the sister of the applicant i.e. Alka had also

approached the police station and lodged a report alleging therein that the incident had in fact occurred as disclosed by Chandrakant. Alka has specifically stated that in the course of the altercation, Damu had brought the knife from his house and was attempting to assault the present applicant. At that stage, the present applicant had snatched the knife from Damu and stabbed Damu in the stomach. They suspected that Damu had died an instantaneous death and therefore fled from the scene of offence. On the basis of her report, Crime No.78 of 2015 is registered at police station against the members of family of Gurunath, Bhagubai Wagh and Jijabai Wagh, for the offence punishable under Section 324 of IPC.

5. The learned counsel for the applicant vehemently submits that there are cross-cases in respect of the said incident. It is further submitted that the applicant was not carrying the knife as he had always made a endeavour to pacify the quarreling wives of Gurunath. According to the learned counsel, the applicant had exceeded his right of private defence and, therefore, he deserves to be enlarged on bail.

6. The papers of investigation would indicate that the applicant had sustained a contused lacerated wound on his parietal bone which was a

fresh injury. He was examined on 20.5.2015 itself. The submission of the learned counsel is supported and corroborated by the M.L.C. report of the applicant.

7. The learned APP submits that the registration of Crime No.78 of 2015 was only a retaliation to the registration of Crime No.77 of 2015. It is also submitted that the complainant in Crime No.78 of 2015 happens to be the real sister of the present applicant and hence the report is filed only to save her own brother. The statement of the wife of the deceased was recorded on 25.5.2015. She was at home at the time of incident. She had rushed to the spot only upon hearing cries of her husband. According to her, the dead body was kept in the house of Damu who was residing close-by and thereafter the incident was disclosed to the relatives.

8. Upon perusal of the post-mortem notes, it is clear that the cause of death is stab injury to abdomen. Clause No.17 of the post-mortem notes would show that there was a single stab wound. It is in these circumstances that it cannot be said that the applicant had taken undue advantage of the situation. There are two versions of the same incident which can be determined at the stage of trial. As on today, it can be said

that the applicant had sustained injuries and there is no plausible explanation for the injuries sustained by the accused. It is incumbent upon the prosecution to explain the injuries on the person of the accused. It is in these circumstances that the applicant deserves to be enlarged on bail.

9. The above observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

### **ORDER**

- (i) The application is allowed.
- (ii)** The applicant be enlarged on bail on his furnishing P.R.Bond in the sum of Rs.50,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report to the Murbad Police Station on first Sunday of each month till framing of charge.

Application stands disposed of.

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