

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1401 OF 2016

Mobin Abdul Rafiq Shaikh	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket U. Nikam, i/b. Mr. Aashish Satpute, Advocate for the applicant.
Ms. Veera Shinde, APP, for the State.
Mr. P.B. Ahire, PSI, MPC Police Station, Kalyan present.

CORAM: SMT. SADHANA S. JADHAV, J.
DATE : 9th March, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 23.5.2016 in Crime No.283 of 2015 registered at Mahatma Phule Chowk Police Station on 17.3.2015. The supplementary charge-sheet is filed against the applicant on 16.8.2016.

2. It is the case of the prosecution that on 17.3.2015, one Kirti Prakash (transgender) lodged a report at the police station. The complainant was residing in Patri Chawl as tenant of one Shinde. The complainant had met one David Patrick. He used to meet the complainant intermittently. Subsequently, David had started residing with the complainant. Rajkumar Bharati and Pednekar were friends of David and they used to meet him. On 16.3.2015, Pednekar and Pramod had stayed

with David in the same room. On 16.3.2015, they had a party. One Rajkumar Bharati had been to the house of the complainant. Rajkumar was accompanied by 10 - 15 persons. Some of the persons had assaulted the complainant. They had entered into the house. They all mounted assault upon David with choppers and swords. David and Pednekar were taken to the hospital by neighbours where he was declared dead.

3. In the course of investigation, statement of one Rajkumar Bharati was recorded and he had stated that he was selling cutlery in the area of Igatpuri Railway Station. His statement was recorded on 18.3.2015. and he had stated that the present applicant had taken him to the house of Rajabhai on the date of incident. Rajabhai is Raja Dhamne who collected protection money. It is the allegation that he had shown the location of the deceased to the principal accused before the incident. The statement was subsequently recorded on 24.5.2016 and he has reiterated the same statement,. Upon perusal of the papers of investigation, it cannot be said that the applicant had knowledge of the fact that the co-accused who was to assault the deceased David. The learned counsel submits that the allegation is that he had given lift to Rajabhai on that day.

4. The observations are restricted to an application under Section 439 of Cr.P.C. and they shall not be taken into consideration while deciding

the quashing application, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount.
- (iii) The applicant shall report to the Mahatma Phule Chowk Police Station on every Sunday between 10.30 a.m. to 1 p.m. till framing of charge.

The application is allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)