

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1893 OF 2016

Gangaram Yellappa Kunchikurve.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Anand V. Upadhyay, advocate for Applicant.

Mrs. P.P. Shinde, APP for State.

Mr. Bhagwat R. Garande, PI, Andheri Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 2, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 5/1/2014 in Crime No. 254 of 2012 registered at MHB Colony Police Station, Thane. Investigation is completed and charge-sheet is filed against

the applicant for offence punishable under section 302, 143, 144, 147, 148, 149 of the Indian Penal Code

3 It is the case of the prosecution that on 5/10/2012 one Shivkant Yadav was assaulted by a mob on the ground of previous enmity. It is alleged that the cause of dispute was the place for pay and park. That earlier Kanaiyalal Yadav was conducting the business of pay and park at lane Nos. 7 and 8 opposite link road. Kanaiyalal Yadav left Bombay and therefore, the work was conducted by one Vijay Yadav. After demise of Vijay Yadav, the work was conducted by one Dinesh Yadav. It is alleged that the brother of the present applicant and his associates as well as the applicant were interested in running that pay and park work on the same road. Shivkant Yadav had intervened. He was threatened by the associates of the brother of the applicant. On 5/10/2012 Shivkant Yadav was assaulted. There are eye witnesses to the incident, who had categorically stated the names of the assailants including the name of the applicant and have also described particular role to all the accused. It is alleged that the applicant had

assaulted with sword. There are more than 5 eye witnesses to the incident.

4 The learned Counsel for the applicant submits that the applicant is in custody since January, 2014. The prosecution desires to examine as many as 66 witnesses. On the earlier occasion the trial was expedited. However, trial is moving at snail's pace and hence, according to the learned Counsel, the applicant deserves for enlargement on bail.

5 The learned APP submits that the trial has commenced. One witness has been examined and therefore, it would not be appropriate to consider the application under section 439 of the Code of Criminal Procedure, 1973.

6 As far as merits of the case are concerned, the learned Counsel for the applicant submits that since the applicant had been externed for a period of 2 years from 2011 to 2013, he was not in Bombay on

the date of the incident. The applicant was externed under section 56 of the Maharashtra Police Act. It is also contended that there is no injury sustained by the victim corresponding to the weapon attributed to the present applicant as well as cities of the injuries. According to the learned Counsel, the applicant therefore, deserves to be enlarged on bail and that he has been falsely implicated only because he had criminal antecedents, that he was externed and that his brother was involved in the said offence.

7 Upon perusal of the papers of investigation, it is clear that there is direct evidence in this case. There is no reason to disbelieve the eye witnesses at this stage, unless they are given an opportunity to substantiate their contentions before the Sessions Court. The learned APP submits that although the applicant was externed, the possibility that he has flouted the order for some period cannot be rule out.

8 Be that as it may, taking into consideration material collected by the investigating agency, more particularly, the fact that there is

direct evidence against the applicant, this Court is not inclined to enlarge the accused on bail in the midst of the trial, as the possibility that the evidence could be tampered with, cannot be ruled out. The learned Sessions Judge seized with the Sessions Case No. 9 of 2013 is hereby directed to expedite the trial as far as possible. The learned Sessions Judge shall not grant any unwarranted adjournment to the prosecution and shall also ensure that all the accused are produced before the court on the stipulated dates, failing which, the learned Sessions Judge shall take appropriate action against the authorities.

9 With these directions, the application stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)