

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

BAIL APPLICATION NO.2127 OF 2017

Dilip Maruti Kshirsagar Applicant

Vs.

The State of Maharashtra Respondent

Mr. Mr. Satyavrut Joshi for the Applicant.
Ms. Veera Shinde, APP for the State-respondent.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 19th December, 2017

P.C.:

1 Heard the learned counsel for the applicant and the learned A.PP.

2 This is an application under 439 of Code of Criminal Procedure. The applicant herein is arrested on 27th December, 2016 in Crime No.332 of 2016 registered at Karad City Police Station, District Satara, for the offences punishable under Sections 302, 365, 386, 324, 323, 506 read with 34 Indian Penal Code. The investigation is completed and charge-sheet is filed on 23rd March, 2017.

3 This is a subsequent bail application. The earlier application seeking pre-arrest bail under Section 439 Cr.PC. was rejected. The proclamations were issued against the applicant. The said proclamations were stayed on the ground that the applicant would surrender and accordingly the applicant has surrendered on 27th December 2016.

4 The facts of the case are that on 17th June, 2016, the Police of Karad City Police Station had been to Ghoti, Taluka Karmala and had approached Raosaheb Jadhav alongwith them to Karve Naka Police Chowki, as he was purportedly wanted in Crime No.257 of 2016. Alongwith Raosaheb Jadhav, the police had also brought his brother-in-law. The applicant was one of the police constable, who had gone to Ghoti to bring Raosaheb Jadhav and had travelled alongwith him in the same Swift car. It is the case of the prosecution that in transit, Raosaheb Jadhav was assaulted by the police and there was a demand of Rs.25.00 Lacs from him. Raosaheb and his brother-in-law namely Hiraji alias Anil Dashrath was brought to Karve Naka Police Chowki. That while in the custody, Raosaheb Jadhav was brutally assaulted by Senior P.I., Mr. Dhas, API Kankadaki and other police personnel. That in the intervening night of 17th and 18th June, 2016, Raosaheb Jadhav was assaulted. On 18th June, 2016, in the morning, Senior P.I., Dhas had assaulted him at about

2.00 am. At about 5.00 am., Raosaheb Jadhav was requesting the Police to take him to the hospital as he could not bear the pain. However, police did not hear his say and neglected to carry him in the hospital. The brother-in-law of Raosaheb Jadhav namely Hiraji had noticed injuries on the person of Raosaheb Jadhav. At about 9.00 to 9.30 am., Raosaheb was again assaulted by Dhas. Thereafter Raosaheb had become unconscious and was taken to Sahyadri Hospital and he was administered medicines. It appears that a pace-maker was fitted, subsequently he was declared dead.

5 On 20th June, 2016, Hiraji lodged report before the C.I.D., Crime Branch.

6 Learned counsel for the applicant submits that the applicant is merely the Head Constable. There is no material to indicate that the applicant had assaulted the victim- Raosaheb at any point of time, although he had travelled alongwith the victim from Ghote to Karve Naka Police Chowki. It is also submitted that at the most, the applicant would be liable for the offence punishable under Section 201 of Indian Penal Code, which is punishable for not more than 4 years and it is a bailable offence.

7 Learned AGP has drawn the attention of this court to the compilation of the charge-sheet and has submitted that the applicant

is an accomplice in the crime. It is pertinent to note that when Raosaheb was brought from Ghote to Karve Naka Police Chowki, neither the police station at Karmala nor any other police station was informed that Raosaheb was wanted accused in the crime and was taken in custody. That the present applicant was standing as a guard, when the victim was being brutally assaulted. Moreover, on 18th June, 2016, Dr. Riyaz Bashir Khan was called to the police station and the applicant had disclosed to the police that he is suffering from back pain. The Doctor had administered medicines and injections to the present applicant. The applicant had also requested the Doctor to prescribe an ointment, which would eliminate the black marks on his body. Accordingly, Doctor had prescribed Thrombophob. The present applicant had applied Thrombophob to the victim Raosaheb. The Doctor was once again summoned after 11.00 am. and the present applicant had complained that the pain has not recovered and therefore, once again he had taken medicines. Thereafter, the applicant had led the Doctor to examine Raosaheb. The Doctor had advised that Raosaheb is in need of medical emergency. The applicant had then carried the injured to Sahyadri Hospital, at the time of admission, he had disclosed that he is close friend of Raosaheb Jadhav. Thereafter he had disclosed to the doctor that while Raosaheb was chewing something, he had fallen from the chair and had sustained injuries. However, upon examining the patient, Doctor had seen several

injuries and had arrived at a conclusion that it is a medico legal case and therefore, the same was registered as a medico legal case.

8 Upon perusal of the papers of investigation, it cannot be said that the applicant has not played an active role. In fact, he was very much present in the police station, where injured Raosaheb was being assaulted brutally by Senior P.I., Mr. Dhas and Kankadaki. The accused has facilitated the commission of assault upon the injured. In fact, it was not necessary to bring the accused Raosaheb to Karve Naka Police Chowki. There are specific allegations that while in transit also, Raosaheb was brutally assaulted by the Police. So much so, he had sustained bleeding injuries on his fingers and nails.

9 Learned counsel for the applicant vehemently submits that by virtue of doctrine of parity, the applicant also deserves to be enlarged on bail. Learned counsel for the applicant submits that the other police personnel namely Nitin Kadam, Sumit Mohite, Atul Deshmukh and Sudhir Jadhav have been enlarged on bail by this court. There is evidence that they had travelled with Raosaheb in the same vehicle and had also assaulted him while in transit. According to the learned counsel the applicant deserves bail. As against this, the learned APP has vehemently submitted that in fact the role of Nitin Kadam, Sumit Mohite, Atul Deshmukh and Sudhir Jadhav has

come to an end at 4.00 pm. i.e. after Raosaheb was lodged in Karve Nagar Police Chowki and handed over to the police there. In fact, the eye-witness Hiraji has specifically contended that the police personnel, who were standing guards had facilitated the assault on Raosaheb.

10 This court is of the opinion that in the given facts of the case, coupled with the fact that there is rise in the custodial deaths mostly in Western Maharashtra, the police do not deserve to be shown leniency. It is seen that custodial deaths are not only rampant but the police are using various modalities to cause disappearance of evidence. As in this case, the prime accused had taken plea of alibi which was against the records. The records are tampered. There is no deterrence to the custodial deaths and hence, the applicant does not deserve to be enlarged on bail.

11 The observations are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial.

(Smt. Sadhana S. Jadhav, J)