

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2085 OF 2016

Dilip Govind Utekar & Anr.

.... Applicants

Versus

State of Maharashtra
through Mumbra Police Station.

.... Respondent

Mr. Sudeep Pasbola i/b. Mr. Rahul Arote for Applicants.

Mr. Arfan Sait, APP for Respondent/State.

Mr. S.V.Nikam, PI, Mumbra Police Station, Thane City.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 24TH JANUARY, 2017.

P.C.

. Heard. This is an application under Section 439 of Cr.PC. The applicants herein are arrested on 16th April, 2016 in Crime No. I-188 of 2016 registered at Mumbra Police station on 16th April, 2016. The investigation is completed and charge sheet is filed on 13th July, 2016 against the applicants for the offence punishable under Sections 302, 307, 143, 144, 147, 148, 149 of Indian Penal Code.

2. It is the case of the prosecution that on 16th April, 2016 Jayesh Dattaram Nikam lodged the report at the police station

alleging therein that he happens to be the younger brother of Gulchand Dattaram Nikam. They are residing in the same building, but separately. It is contended that their used to be intermittent quarrels between the wife of Gulchand and his mother Mrs. Sarita. It is also contended that the members of the maternal family of Priti used to pacify the quarrels between the couple. They used to visit the house of Gulchand quite often. It is alleged that on 15th April, 2016 he had heard hue and cry from the house of his brother Gulchand. Upon instructions from his mother, he had visited the house of Gulchand and there he had seen the father of Priti i.e. the present applicant no.1 and his co-brother present in the house. The brothers of Priti and other relatives were also present in the house. It appears that the relatives of Gulchand and his friends were also present. There was a verbal altercation between the members of both the families. The passions were high. That Priti, her sister and her brother-in-law were abusing the mother of the first informant. In the course of altercation, Akash Dilip Uttekar had picked up a scissor at the instance of Priti and her sister and they had started assaulting Sameer Mangesh Dewalkar, who happened to be the friend of the first informant. It is specifically alleged that Priti was exhorting Akash to assault them. Sameer was initially taken to Dhanvantari Hospital at Diwa and from there he was taken to Hardev Hospital. He was declared dead on admission.

3. The learned counsel for applicants submits that it is the case of the first informant also that the father, uncle and other

relatives of Priti used to visit their house quite often to pacify the quarrel between couple. That on 15th April, 2016 also they had come to pacify the quarrel between husband and wife which had taken place on 14th April, 2016.

4. Upon perusal of investigation papers, it is clear that the applicants herein were not armed with any weapon. It also appears that the applicants have also sustained injuries in the said quarrel. They had not even anticipated that Akash would suddenly pick up scissor which was lying in the house of Priti and upon being exhorted by Priti, would assault Sameer. It cannot be said that it was an unlawful assembly or that the members had shared in common object to cause grievous injury to anybody, much less Sameer Dewalkar. It is in the circumstances that applicants deserve to be enlarged on bail.

5. The learned APP submits that the applicants hail from Ahmedabad and may not be available for trial, in the eventuality they will be enlarged on bail. Stringent conditions can be imposed upon the applicants to ensure their attendance at the time of trial.

6. 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) Application is allowed.
- (ii) The applicants be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 50,000/- each with one or more local solvent sureties in the like amount.
- (iii) The applicants shall report to Mumbra Police Station on 1st Sunday of each month till the framing of charge.
- (iv) Upon failure to attend the police station on any two consecutive dates the prosecution would be at liberty to seek cancellation of bail.

(SMT. SADHANA S. JADHAV, J.)