

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2173 OF 2016

Aakash Ajit Nikam @ Aakya Nikam ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr. K.T.Thomas, Advocate for the applicant.

Mr. Arfan Sait, APP, for the State.

Mr. Chandrakant Khuspe, PSI, Vitthalwadi Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 13th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 17.9.2015 in Crime No.281 of 2015 registered at Vithalwadi Police Station, Ulhasnagar. The investigation is completed and charge-sheet is filed against the present applicant and others on 10.12.2015 for the offences punishable under Sections 302, 323 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 17.9.2015, Deepak, who happens to be the informant, father of Sushant, lodged a report at the police station that on that day, the Municipal Corporator Shri Vijay Tayde asked him the whereabouts of his son. The first informant had told the Corporator that he has not returned home since 16.9.2015. Upon that the

Corporator had taken him near the Police Jeep, where he learnt that his son Sushant had been admitted in Central Hospital, Ulhasnagar as he had sustained grievous injuries. The first informant had noticed that his son had sustained grievous injuries on his leg and his friends Mukesh and Sachin were accompanying him.

3. Upon further enquiry, the friends of Sushant i.e. Mukesh and Sachin had disclosed to the first informant that on the earlier day, there was a quarrel when Pawan Gaikwad and the present applicant had asked Sushant as to why he had visited Amboli Chowk. Thereafter, at about 4.45 a.m., Sushant had met two other friends in Amboli Chowk. At about 4.45 a.m. at about the same place, one Gaikwad, the present applicant and Akshay had come to the spot. They had raised quarrel with Sushant and had started assaulting him. Mukesh and others were requesting them not to assault Sushant. At that time, Aakash i.e. the present applicant had assaulted Sushant with a broken glass bottle due to which he sustained grievous injuries on his head. The said injury turned out to be fatal.

4. The learned counsel for the applicant submits that in fact, it is a sudden provocation. There is no direct evidence. Upon perusal of compilation of the charge-sheet, it is a case of direct evidence wherein Mukesh and Sachin appeared to be eye-witnesses. They are the boys who

had taken the injured to the hospital. Besides this, there is an oral dying declaration to PSI Anand by the deceased. The deceased had specifically disclosed that he has been assaulted by the present applicant and his associates.

5. Taking into consideration the incriminating material collected by the investigating agency in the course of investigation and upon hearing the submissions of the respective counsel, this Court is of the opinion that the applicant does not deserve to be enlarged on bail. The application being sans merits, stands rejected.

(SMT. SADHANA S.JADHAV, J.)