

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

CRIMINAL BAIL APPLICATION NO. 2577 OF 2016

Rajkumar Ramchandra Jha. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kabul Singh Labana, advocate for Applicant.

Mr. Sachin Chandan, advocate for intervenor.

Mr. R.M. Pethe, APP for State.

Mr. G.K. Torgal, PSI, Central Police station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 15, 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 20/9/2015 in Crime No. 448 of 2015 registered at Central Police Station. The

investigation is completed and charge-sheet is filed against the applicant under section 302, 201 of the Indian Penal Code.

3 It is the case of the prosecution that on 19/9/2015 Lorence Peter Achhangarden lodged a report at the police station alleging therein that on 19/9/2015 Akbar Khan had called him on his cell phone and informed him that his brother Asgar is lying in a pool of blood in his house. The first informant rushed to the house where Asgar was staying. The door was opened by two persons. It was noticed that Asgar was lying in a pool of blood. He accordingly informed the police station. On the basis of the said report, Crime No. 448 of 2015 was registered against unknown person for offence punishable under section 302 of the Indian Penal Code.

4 On 19/9/2015 the investigating agency had recorded statement of one Mohit Sahani, who was a good friend of Asgar. They hail from the same village. He disclosed to police that Asgar used to stay with Akbar, but used to sleep in the shop of Maulana Sheth. Akbar has

gone to his native village on 16/9/2015 and hence, Asgar was sleeping in the house of Akbar. On 16/9/2015 and 17/9/2015 Mohit Sahani was sleeping with Asgar in the house of Akbar. In the intervening night of 17/9/2015, they had met present applicant and Asgar had introduced the present applicant to Mohit Sahani as his co-employee Rajkumar Jha. On 18/9/2015 when Asgar and Mohit Sahani were sleeping in the house of Akbar, at about mid-night, there was a knock on the door. Asgar had opened the door and found the present applicant. The present applicant had disclosed to Asgar that he had some problem with the police and therefore, requested him to allow him to sleep in his house. At night Asgar and the present applicant were sleeping in the same house, whereas Mohit Sahani had left house.

5 On 19/9/2015 Mohit Sahani had been to the house of Asgar and he found that room was locked from outside. He presumed that the applicant and Asgar must have gone for walk. In the afternoon he received a phone call from Akbar enquiring about whereabouts of

Asgar, since he had received phone call from his employer that Asgar has not attended his duties. In the evening at about 7 p.m., Akbar has once again called upon Mohit Sahani. Mohit Sahani and son of Maulana Sheth had gone to the house of Asgar. The door was locked from outside. They tried to call him on his cell phone. It was not received. Akbar telephonically told Mohit Sahani to break open the lock. The door was broken by the witnesses and they saw that Asgar is lying in a pool of blood.

6 The learned Counsel for the applicant has drawn the attention of this court to the statement of Mohit Sahani recorded under section 164 of the Code of Criminal Procedure, 1973. Mohit Sahani has stated that at the relevant time, one unknown person had come to the house of Asgar and stayed in the house alongwith Asgar at the relevant time. He had resiled from his earlier statement under section 161 of the Code of Criminal Procedure, 1973 only to the extent that the name of the applicant was not mentioned in the statement under section 164 of the Code of Criminal Procedure, 1973. After the

statement under section 164 of the Code of Criminal Procedure, 1973 was recorded, the applicant was put to test identification parade and he has been identified by Mohit Sahani as the same person who had visited the house at the relevant time and was last seen in the company of the deceased.

7 The learned Counsel for the applicant vehemently submits that the statement of Mohit Sahani shall not inspire confidence of the Court as there is variance in the statement under section 161 and 164 of the Code of Criminal Procedure, 1973. The case is of circumstantial evidence and according to the prosecution, the applicant was last seen in the company of the deceased.

8 The investigating agency has also recorded the statement of Rajesh Jha who happens to be the driver of the applicant. He has stated that on 18/9/2015 he had driven the applicant and his family to Kumbhamela at Nashik. They returned at about 9.30 p.m. That Arshad Ayub Shaikh happens to be partner of the applicant. That on

19/9/2015 the applicant had called upon him and informed him that he had been to Nashik on the earlier day. His car failed and he has somehow managed to reach Mumbai. That he had enquired as to whether Ajgar had attended the job. At the same time Arshad was informed by the applicant on the phone that the police will come to the shop. The police had called upon Arshad to meet them and at that stage he was informed that Ajgar had met with homicidal death. Arshad had specifically stated that the relationship between Asgar and the applicant are not cordial and they used to quarrel and Arshad used to pacify their quarrel.

9 It is further pertinent to note that in the course of investigation, the key of the house of the Asgar was found with the applicant. The chain of circumstantial evidence prima facie appears to be indicative of the involvement of the applicant in the offence.

10 In view of this, the applicant does not deserve to be enlarged on bail. The application being sans merits stands rejected.

11 The observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration at the time of trial.

12 The application disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)