

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2599 OF 2016

Sagar Vitthal Gavas	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 2606 OF 2016

Gautam Sahebrav Ghadge	...	Applicant
vs.		
State of Maharashtra	...	Respondent

Mr.Viral K. Rathod,Advocate for the applicant (in both matters).
Mrs. P.P.Shinde,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicants herein are arrested on 7.6.2015 in Crime No.326 of 2015 registered at Bhandup Police Station. The investigation is completed and charge-sheet is filed against the applicants and others for the offences punishable under Sections 302, 452, 427, 506(II), 143, 147, 148, 149 of the Indian Penal Code.

2. It is the case of the prosecution that on 7.6.2015, Priya Anil Pande lodged a report at the police station that her husband was working as

the Secretary of Vikas Mathadi Kamgar Sena. That since 4.6.2015, the friend of her husband, namely, Vija Bawa was staying with them. Both the friends used to go for a morning walk with their pet dog Kiwi. On 6.6.2015, as usual, both the friends had been for a walk in the forest area. They did not return home till 8 p.m. At about the same time, one of his friend Yogesh informed Mrs. Priya that when Anil and his friends were passing through the forest area, some boys were playing cricket and the ball had hit their dog. That Saurav Khopade was attempting to take ball from the mouth of the dog, he was beaten. Hence, there was altercation between Saurav Khopade and Anil. At about 10.30 p.m., Anil returned home along with his friend. He had requested her neighbour Anusuya Tumbade to latch the door from outside in order to restrain Anil from going out of the house to quarrel with the said people. It is alleged that in the midnight i.e. in the intervening night of 6th June and 7th June 2015, Saurav Khopade along with his associates reached the house of Anil, hurled stones at his house, abused them. At that time, Saurav Khopade and his friends were armed with swords and kives. Saurav Khopade was accompanied by 5 – 6 unknown persons who were armed with base ball, iron rods and knives. They broke open the door of the house of Anil and barged inside. They mound assault upon Anil. He was brutally beaten by all the miscreants. They had also

threatened the first informant of dire consequences before leaving the house. The first informant with the help of her neighbours had taken Anil to the hospital where he was declared dead on admission.

3. In the present case, the name of the applicants does not find place in the FIR. The first informant has specifically named Saurav Khopade, Prad, Ravi, Shubham Bhogale, Sameer Chavan, Chintya and 3 other unknown persons.

4. In the course of investigation i.e. prior to filing of the charge-sheet, test identification parade was not conducted to ascertain the identity of the unknown persons. It is not the case of the prosecution that the identity of the accused was concealed when they were taken to the courts to attend the dates as contemplated under Section 309 of Cr.P.C. In the course of investigation, there is recovery under Section 27 of the Indian Evidence Act in respect of Gautam i.e. applicant in Criminal Bail Application No.2606 of 2016. The said recovery from Ram Nagar compound No.2, next to Matoshree Mitra Mandal. According to the prosecution, the said sword with a steel blade was concealed below the shutter guard. That there was also recovery from the co-accused. That was also recovered from the same spot. It is not the case of the prosecution that the shutter of the said shop was not opened till 11.6.2015. It is further pertinent to note that from

the scene of offence itself, the police had seized a bat, a wooden log, base ball sticks, the clothes of the deceased and a sharp-edged knife, a sword and some other weapons.

5. It is further pertinent to note that after completion of investigation and filing of charge-sheet, the test identification parade was held.

6. The learned counsel for the applicant submits that test identification parade would be a corroborative piece of evidence and, in any case, it is held after filing of charge-sheet. The learned counsel submits that the applicants are entitled to grant of bail by virtue of doctrine of parity. The learned counsel has placed reliance upon the orders passed by this Court dated 16.9.2016 by which accused Vishwadeep Naik was enlarged on bail and the order dated 13.12.2016 thereby enlarging Sachin Hatpale on bail. It is a matter of record that both persons were not named in the FIR. Similarly, the present applicants are also not named in the FIR. There is a recovery of weapons and blood stained clothes at the instance of accused Vishwadeep Naik and Sachin Hatpale. While granting bail in favour of Vishwadeep Naik, the Hon'ble Court (Coram: A.S.Gadkari, J.) has held that there is no chemical analyser's report available on record to conclude that

the blood stains found on the weapons which were recovered at the instance of the present applicants were used in assaulting Anil Pande and it was also observed that till date, the record annexed to the present application is silent about any test identification parade held by the Investigating Officer to establish the identity of the applicants. It is a matter of record that the applicants herein do not have any criminal antecedents.

7. The learned counsel for the applicants submits that in fact, the accused persons had no animosity with the deceased. It cannot be said that they had shared common intention with Saurav Khopade or that they had accomplished the common object with Saurav Khopade. There are 5 persons who have been specifically named in the FIR. There was an altercation between Saurav Khopade and the present applicants. It is alleged that since the applicants are residents of the same locality, the applicants have been falsely implicated in the present case. By virtue of parity, this Court is inclined to enlarge the applicants on bail.

8. It is made clear that the learned Sessions Judge shall not be influenced by the said observation at the time of trial.

ORDER

- (i) The applications are allowed.
- (ii) The applicants be enlarged on bail on each furnishing P.R. Bond in

the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

(iii) The applicant shall mark their presence before the Sessions Court on each and every date and shall also mark their presence before Bhandup Police Station on every Sunday till the conclusion of the trial. Upon failure to attend any two consecutive dates before the Sessions Court, the learned Sessions Judge shall issue non-bailable warrants against the applicants and shall take them into custody forthwith.

(iv) On failure to mark the presence by the applicants at Bhandup Police Station on any 3 consecutive dates, the police officer shall bring it to the notice of the learned Sessions Court forthwith for appropriate action.

Both the applications stand disposed of.

(SMT. SADHANA S.JADHAV, J.)