

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

BAIL APPLICATION NO. 135 OF 2018

Mahadeo Dattatray Tupe. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Aniket Nikam i/b. Mr. Aashish Satpute, advocate for Applicant.

Ms. S.S. Kaushik, APP for State.

Mr. R.B. Satanvar, PSI, Chinchwad Police Station, Pune City.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : FEBRUARY 6, 2018

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 27/3/2017 in Crime No. 78 of 2017 registered at Chinchwad Police Station for

offence punishable under section 307, 323, 504, 326 read with section 34 of the Indian Penal Code with section 4(24) of Indian Arms Act and section 37(1)(3), 135 of the Police Act. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 26/3/2017 Abhijit Chavan lodged a report alleging therein that he was taken to Yashwantrao Chavan Memorial Hospital in injured condition. At the time of admission he was smelling of alcohol. He had sustained 3 injuries. Since it appeared to be a medico legal case, statement of the injured was recorded. He had disclosed to the police that on 25/3/2017 at about 7 p.m. while he was returning home, the present applicant had called upon him and asked him to stop and thereafter had enquired with him as to whether he wants to quarrel since there was a quarrel on the earlier occasion between them. It is alleged that soon thereafter, present applicant had assaulted the complainant with fists and kick blows, whereas his friend Nilesh who had concealed weapon in the back side of his shirt had drawn the same and

assaulted Vishal who was accompanying with the complainant. On the basis of the said report, Crime No. 78 of 2017 was initially registered for offence punishable under section 323 and 326 of the Indian Penal Code. However, subsequently, on perusal of the medical case papers of Vishal Sonavane, Section 307 was added. Vishal was treated as an indoor patient.

4 The papers of the investigation do not indicate that the present applicant had assaulted Vishal who had sustained grievous and fatal injuries. Taking into consideration the papers of investigation, the medical certificate of Abhijit Chavan and the role attributed to the applicant coupled with the fact that the investigation is completed and charge-sheet is filed, the applicant deserves to be enlarged on bail.

5 However, the observations made hereinabove are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the trial court shall not be influenced by the same while

deciding application for quashing of FIR, discharge application or at the time of trial.

6 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall report to Chinchwad Police station on 1st Sunday of each month till framing of charge.
- (iv) The applicant shall not tamper with the evidence.

7 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)