

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 976 OF 2017***

Kalpesh Chandrakant Badekar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.M.K.Kocharekar i/b Mr. Randhir A. Kale, for the applicant.
Ms. Veera Shinde, APP, for the State.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 9th January, 2018.***

P.C. :

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 27.5.2016 in Crime No.85 of 2016 registered at Karjat Police Station, District Raigad on 20.5.2016. The investigation is completed and charge-sheet is filed on 18.8.2016 for the offences punishable under Sections 302, 326, 324, 323,341, 147, 148, 149, 427 and 504 of the Indian Penal Code.

2. It is the case of the prosecution that on 20.5.2016, Manohar Kaqrnuk lodged a report at the police station alleging therein that his brother Kisan was residing next to his house and he was the owner of a

brick kiln which was at a short distance from the house. It is alleged that on 20.5.2016, the applicant heard of some quarrel in the direction of the brick kiln of his brother Kisan at about 9 p.m. Out of anxiety when he visited the site of the brick kiln, he noticed that at that time, Kisan and his son Pravin were having altercation with 5 – 10 people. The applicant was one of them. The case of the dispute was that Kisan was requesting the said persons that they should not encroach upon his area while removing mud on the site next to him. Kishore had assaulted Kisan with a spear on his head and hand. The first informant had attempted to intervene. At this stage, the first informant and the son of Kisan were assaulted. The other members of the family were also assaulted. Thereafter, the incident was over. When the first informant and the relatives were attempting to take Kisan to the hospital, the assailants had broken the glass of the vehicle. Specific role has been attributed to the present applicant. The supplementary statement of the complainant was recorded on 12.8.2016, wherein he has named the unknown persons. Kisan had succumbed to the head injury on 21.5.2016.

3. The learned counsel for the applicant submits that the role ascribed to the applicant is of omnibus nature and that he cannot be held liable for the vital injury caused upon the deceased Kisan.4.

4. Upon perusal of the post-mortem notes, it appears from the medical record that it would indicate that the deceased had sustained three grievous injuries on his head. There was fracture of parietal. bone. There are internal injuries corresponding to the external injuries. The cause of death is haemorrhagic shock due to head injury. It appears that all the members of the unlawful assembly had the common object of assaulting Kisan. It cannot be said that omnibus role has been ascribed to him.

5. The learned counsel for the applicant has drawn attention of this Court to the order dated 27.1.2017, wherein this Court (Coram: Mrs. Mridula Bhatkar,J.) had directed that in the eventuality the trial does not commence till 31.12.2017, the applicant would be at liberty to renew his prayer for bail. The learned counsel for the applicant submits that in fact till today, the charge is also not framed and that there is no compliance of the order passed by this Court.

6. Be that as it may, it appears from the record that Kisan has died a homicidal death at the hands of the unlawful assembly in which the applicant had played a vital role. Hence, no case for bail is made out.

The application is rejected.

7. The learned Sessions Judge, Raigad – Alibag seized with

Sessions Case No.79 of 2016 is requested to make an endeavour to expedite the trial and conclude the recording of evidence, as far as possible, within eight months from the date of framing of charge.

(SMT. SADHANA S.JADHAV, J.)