

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

CRIMINAL BAIL APPLICATION NO. 1259 OF 2018

Somesh Anil Anpar @ Anpat.

..Applicant.

V/s.

The State of Maharashtra.

..Respondent.

Mr. Aniket U. Nikam I/b. Mr. Aashish Satpute, advocate for applicant.

Mr. S.S. Penekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 14, 2018.

P. C. :

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

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant here is arrested on 25/6/2015 in Crime No. 197 of 2015 registered at Panvel City Police Station, initially for offence punishable under section 326, 323 read with section 34 of the Indian Penal Code and subsequently charge-sheet is filed under section 307, 326, 323, 143, 144, 147, 149, 506, 120(b) of Indian Penal Code and under section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of

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Organised Crime Act.

3 It is the case of the prosecution that one Kishor Babare lodged a report at Panvel Police Station alleging therein that he is an Electric contractor. He had got a contract from Satyam Builders and some other companies. That on 23/6/2015 when he was parking his vehicle in front of hospital at Panvel, he was assaulted with deadly weapon by unknown person. He was assaulted by iron rod and baseball bat. On the basis of his report, Crime No. 197 of 2015 was registered at the police station against one Sunil Sable, present applicant and others.

4 He has sustained fracture of Tibia and injury to his shoulder and other grievous injuries.

5 In the course of investigation, statement of one Suhas Dube was recorded. He had disclosed that he was working at Octroi Naka and used to have food in dhaba just opposite to octroi naka. Sunil Sable used to visit the said dhaba. They were in contact with Suhas Dube. On 25/6/2015 Sunil Sable was accompanied by 4 to 5 person. The applicant was one of them. At that juncture, Sunil Sable had assured Suhas Dube and the present applicant that he would pay Rs. 30,000/- and they should admit that they have assaulted one Mr. Kishor Babare and that

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they would be enlarged on bail at the earliest and therefore, Suhas Dube and the present applicant had surrendered before the police. It is pertinent to note that a report under section 169 of the Code of Criminal Procedure, 1973 is passed in favour of Suhas Dube. The applicant is in custody since 2015. Learned APP fairly submits that the applicant has no criminal antecedents. He has not been charge-sheeted along with Sunil Sable in other cases.

6 In view of this, the applicant cannot be prosecuted under the provisions of Maharashtra Control of Crime Act. Hence, the satisfaction under section 21(4) of the Maharashtra Control of Crime Act can be recorded. In view of this, the applicant deserves to be enlarged on bail.

7 The observations are prima facie in nature and restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered for discharge application or at the time of trial.

8 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in

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the sum of Rs. 15,000/- with one or more solvent sureties in the like amount.

(iii) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Aruna
Sandeep
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