

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1319 OF 2017**

Netaji Subhash Dhundare .. Applicant.

V/s.

State of Maharashtra. .. Respondent.

Ms. Shubhangi Pachlekar I/b. Mr. Ravindra Pachundkar, Mr. Prashant Namde, advocate for applicant.

Mr. N.B. Patil, APP for State.

Mr. S.H. Khade, Police Naik, 706, Vaduj Police Station.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 3, 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 is arrested on 15/2/2016 in Crime No. 18 of 2016 registered at Vaduj Police Station for offence punishable under section 394, 397, 201 read with section 34 of the Indian Penal Code and section 3(1)(2), 3(2), 3(4) of MCOC Act. The investigation is completed and charge-sheet is filed.

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3 It is the case of the prosecution that on 22/1/2016 one Sadashiv Sayaji Kale was admitted in Charushila Accident Hospital, Dahiwadi Road, Vaduj. It appeared to be a medico legal case and therefore, the statement of the injured was recorded. He had disclosed that on 27/1/2016, he and his wife Vidya had been to Vita for their personal work. When they were returning home and was passing through Kharmate Vasti to Burungale Vasti, suddenly they had noticed that 3 person driving triple seats had deliberately dashed them. He and his wife had fallen on the road. He was assaulted by knife. Thereafter, they had snatched two ornaments from the complainant and his wife. He was grievously injured. He had seen the colour of the clothes worn by the accused persons. On the basis of the said report, Crime No. 18 of 2016 was registered.

4 During the course of investigation, proposal was submitted by the sub-divisional officer, Dahiwadi Division, District Satara seeking sanction to prosecute the accused in the present case under the provisions of MCOCA. After considering the papers of investigation, sanction was accorded on 26/5/2016. Investigation is completed and charge-sheet is filed.

5 The learned Counsel for the applicant submits that the

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applicant has no criminal antecedents. That there is no recovery from the present applicant. There are 3 inconsistent statements of the injured as well as his wife. And that the prosecution would not be able to establish the guilt of the present applicant even at the time of trial and that there is an error in sanctioning prosecution of the applicant under the provisions of MCOCA as the applicant has no criminal antecedents. He is not charge-sheeted with Akshay Popat Dhas and Mangesh Yadav in other offence and therefore, he deserves to be enlarged on bail.

6 As against this, the learned APP submitted that in the course of test identification parade, wife of the complainant i.e. Vidya has identified the present applicant as the person who was armed with a knife. It is submitted that after dash was given, injured/complainant had fallen on the ground and it was only his wife who could identify the person who was assaulting her husband and hence, there is identification. Therefore, the applicant does not deserve to be enlarged on bail.

7 On perusal of the papers of investigation, it appears that the applicant has no criminal antecedents. He is not charge-sheeted with the co-accused. That there is recovery of knife at his instance. However, the recovery may not inspire the confidence of the court as the applicant has

been arrested on 15/2/2016 i.e. practically after 3 weeks. The evidence of identification at the test identification parade is a corroborative piece of evidence and hence, no implicit reliance can be placed at this stage. The applicant has been in custody for 2 years and 5 months. Hence, the applicant deserves to be enlarged on bail.

8 It is made clear that the co-accused shall not claim parity with the present applicant. The learned APP has specifically submitted that both co-accused have criminal antecedents.

9 The aforesaid observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge application or at the time of trial.

10 Hence, 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. 50,000/- with one or more solvent sureties in the like amount.

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(iii) The applicant shall not reside in Taluka Karad and Taluka Khatau till conclusion of the trial.

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

11 The application is disposed of accordingly.

Aruna
Sandeep
Talwalkar

Digitally
signed by
Aruna
Sandeep
Talwalkar
Date:
2018.07.11
14:55:00
+0530

[SMT. SADHANA S. JADHAV, J.]