

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

CRIMINAL BAIL APPLICATION NO. 1443 OF 2018

Dipak Mahadev Tomake. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Sandeep R. Karnik, advocate for applicant.

Mr. Y.Y. Dabke, 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 is arrested on 27/11/2017 in Crime No. 551 of 2017 registered at Bhartiya Vidyapeeth Police Station, for offence punishable under section 307 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 25/11/2017 one Mahendra Marne lodged a report at the police station alleging therein

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that on 24/11/2017 he was sitting with his friends consuming alcohol. The applicant had joined them. When they were contributing for purchasing alcohol, there was some verbal altercation between the applicant and others and in no time, the applicant had withdrawn himself from the group and had returned with an iron rod and assaulted the complainant and others. At the time of assaulting he had warned the complainant and others that since they were making fun of him, they should suffer consequences. The first informant had sustained injuries. He had sustained multiple scalp bony fracture and with small hemorrhagic contusion. The injured has been discharged from the hospital.

4 The applicant is in custody since November, 2017. Learned APP submits that the applicant has criminal antecedents. That he was an accused in R.C.C. No. 301 of 2014 for offence punishable under section 324, 504 read with section 34 of the Indian Penal Code and that he was acquitted by the Judicial Magistrate First Class, Pune vide Judgment and Order dated 21/9/2016. The learned APP submits that the applicant is habitual offender.

5 Taking into consideration the situation in which the incident has occurred, learned Counsel for the applicant submits that there was grave and sudden provocation at the instance of first informant and his

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friends which led to the present incident. Be that as it may, the applicant is in custody for more than 9 months. Hence, the applicant deserves to be enlarged on bail.

6 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.

7 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. 30,000/- with one or more solvent sureties in the like amount.

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

(iv) The applicant shall not reside within the jurisdiction of Katraj Police station and Bharatiya Vidyapeeth Police Station till the conclusion of the trial.

8 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]