

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1656 OF 2018

1 Somnath Adhikrao Suryavanshi
2 Vaibhav Anandrao Gcharge. .. Applicants.

V/s.

State of Maharashtra. .. Respondent.

Mr. Prashant Mohan Patil, advocate for applicants.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 24, 2018.

P. C. :

1 Heard the learned counsel for the applicants and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure, 1973. The applicants herein is arrested on 30/8/2016 and 1/9/2016 respectively in Crime No. 600 of 2016 registered at Nigdi Police Station, District Pune for the offences punishable under Sections 302, 120(B), 143, 147, 148, 149 read with 34 of the Indian Penal Code, under section 37(1) read with section 135 of the Bombay Police Act and 4(25), 3(25) of Arms Act. The investigation is completed and the charge-sheet is filed.

3 It is the case of the prosecution that on 30th August, 2016 Arati Krushnat Dange lodged a report at the police station alleging therein that

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on 29th August, 2016, her husband Krushnat Dange had left the house on Activa motorcycle to meet his friends. That one of his friends namely Suraj had informed her that Krushnat Dange is lying in an injured condition near Nakshatra Society. She had verified the said information and had rushed to YCM Hospital, Pimpri, Pune, wherein she was informed that Krushnat Dange was declared dead on admission. She has further disclosed that on 5th May, 2016, her husband Krushnat Dange had an altercation with Somnath Chavan, Mayur Salunke and the present applicants. That her husband was in custody for almost three months and was enlarged on bail, just one month prior to his demise. It was on the basis of this information, that the offence was registered against the present applicants.

4 According to the learned APP, a criminal case is registered against Somnath Chavan. It is a matter of record that the present applicants are arrested on the basis of the disclosure statement of the co-accused. Learned APP submits that there is no recovery at the instance of the present applicant under Section 27 of the Indian Evidence Act.

5 Learned Counsel for the applicants submits that this would be a case of no evidence, since only incriminating circumstance by the prosecution is the statement of the co-accused. It is submitted that even otherwise by virtue of doctrine of parity, the present applicant would be entitled to be enlarged on bail.

6 It is pertinent to note that accused Somnath Chavan has been enlarged on bail by this Court (Coram : Revati Mohite Dere, J) vide order dated 5th May, 2017. It appears from the papers of investigation that the

present applicants had no specific motive to eliminate Krushnat Dange and that there were quarrels with Somnath Chavan.

6 The incriminating material against the present applicants is in the form of the statement of the accused recorded in the course of interrogation while in police custody. It is pertinent to note that the said statements form a part of the charge sheet. It is signed by the applicants while in custody and it appears that the investigating agency is placing implicit reliance upon the said statements, which is inadmissible in evidence since it cannot be converted into admissible evidence. It is not the case of the prosecution that statements of the accused thereafter are recorded under section 164 of the Code of Criminal Procedure, 1973 and it is in these circumstances that the applicant deserves to be enlarged on bail.

7 Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicant herein deserves to be enlarged on bail.

8 However, it is made clear that the observations are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for discharge application or at the time of trial.

9 Hence, following order is passed :

ORDER

(i) The application is allowed.

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

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the sum of Rs. 1,00,000/- (Rs. One Lakh only) each with one or more solvent sureties in the like amount.

(iii) The applicants shall attend the concerned police station on the first Monday of every month from 10.00 a.m. to 1.00 p.m. till conclusion of the trial.

(iv) The applicants shall inform their latest place of residence and contact numbers such as landline number and mobile number immediately after being released and /or change of residence or mobile details, if any, from time to time to the trial court as well as to the concerned police station, in writing.

(v) The applicants shall not enter the jurisdiction of Nigdi Police Station, except for the purpose of attending the police station.

(vi) Upon being released, the applicants shall give an undertaking to the learned Sessions Judge, Pune, seized with Sessions Case No. 1117 of 2016 to the effect that they shall attend each and every dates at the time of trial.

(vii) Upon failure to attend more than two consecutive dates, the prosecution would be at liberty to file an application under section 439(2) of Code of Criminal Procedure, 1973.

10 The application is disposed of accordingly.

**Aruna
Sandeep
Talwalkar**

Digitally signed by
Aruna Sandeep
Talwalkar
Date: 2018.07.26
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[SMT. SADHANA S. JADHAV, J.]

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