

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1703 OF 2018

Eknath Kacharu Waje. ..Applicant.
V/s.
The State of Maharashtra. ..Respondent.

Mr. Rameshwar N. Gite, advocate for the applicant.

Mr. Y.Y. Dabke, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 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 herein is arrested on 26th May, 2017 in Crime No. 94 of 2016 registered at Ghoti Police Station initially for offence punishable under section 307, 325, 324, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 23/5/2017 Dattu Waze lodged a report at the police station alleging therein that on that day he was raising level of his boundary. At that stage, the applicant and his family came on the spot. They obstructed the complainant and his family from raising level of the boundary. They were all armed with weapons. They started abusing and thereafter, Eknath i.e. the present applicant had given a blow on the head of Rohidas. Rohidas had fallen to the

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ground. He was taken to the hospital. Since his condition was serious, he was sent to Civil Hospital at Nashik. On the basis of the said report, Crime No. 94 of 2017 is registered. The investigation is completed and charge-sheet is filed. There are eye witnesses to the incident.

4 The learned Counsel for the applicant submits that in fact, it is a cross-case in respect of the said incident and that the accused Kacharu Waze had lodged a report at the police station in respect of the same incident, on the basis of which Crime No. 95 of 2017 is registered at Ghoti Police station for offence punishable under section 326, 324, 323 of the Indian Penal Code.

5 Upon perusal of the papers of investigation, it appears that all the witnesses have consistently stated that it was Eknath alone who had assaulted Rohidas on his head. Rohidas had succumbed to the injury. Therefore, section 302 of the India Penal Code was added.

6 The post mortem notes would show that Rohidas had sustained two injuries on his head. Column No. 19 of the post mortem notes would show that there were patchy diffuse sub arachnoid hemorrhages all over cerebral and cerebellar surface. There was effusion of blood on left temporal occipital and right temporal occipital region. The cause of death was cranio-Cerebral damage due to blunt trauma to head.

7 The learned Counsel for the applicant has initially submitted that the offence has taken place in front of the house of the applicant and that it was informant and his family who are aggressor. It is also submitted that the deceased was suffering from dementia. He had fallen

on the ground and had sustained injury to his head. Learned Counsel has then drawn attention of this Court to the first information report lodged by Rajaram Kacharu Vaze dated 23//5/2017 on the basis of which Crime No. 95 of 2017 is registered and charge-sheet is filed. It was the case of Rajaram Vaze that on 23/5/2017 at about 7. 30 a.m. family of Rohidas was lifting boundary. He, his son Eknath and Indu had told them not to do so. However, there was verbal altercation. They were not in mood of listening and therefore, his son Eknath had informed Rajaram and had called villagers to the spot and that Kacharu was also assaulted with fists and kick blows and thereafter, he had lodged report. According to him, Shivaji Vaze had assaulted Eknath. According to him, Eknath Vaze has sustained injury. The record shows that Eknath had also sustained injury in the said incident.

8 Upon perusal of the papers of investigation in Crime Nos. 94 and 95 of 2017, it appears that there was an altercation in the agricultural land over elevation of boundary. It also appears that some of the eye witnesses have given contrary statement. At this stage, it would be difficult to ascertain as to who was the aggressor, since primarily, it was the family of Dattu Vaze who were working on the boundary with sticks. In these circumstances, the applicant deserves to be enlarged on bail.

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

10 Hence, the following order is passed :

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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.
- (iii) The applicant shall not reside in Ghoti till the conclusion of the trial.
- (iv) The applicant shall not tamper with the evidence.
- 11 The applications are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

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