

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2668 OF 2017**

Prem @ Kakka @ Pramod Santaram Dholpuriya ...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION NO. 2891 OF 2017

Mr. Shailesh Suryakant Walake

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Rajiv Patil, Senior Counsel i/b. Mr. Onkar V. Warange, for the applicant in BA No.2891 of 2017.

Mr. Aniket U. Nikam a/w Mr. Sharad Bhoite i/b. Mr. Aashish Satpute, for the applicant in BA No.2668 of 2017.

Mr. S.H. Yadav, APP, for the State in BA No.2668 of 2017.

Ms. Veera Shinde, APP, for the State in BA No.2891 of 2017.

Mr. M.P. Kadam, API, Dighi Police Station, Pune, present.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 22nd January, 2018.

P.C. :

1. Heard. These are the applications under Section 439 of Cr.P.C.
The applicants herein are arrested on 15.7.2016 in Crime No.121 of 2016 registered at Dighi Police Station on 15.7.2016. The investigation is completed and charge-sheet is filed on 10.10.2016.
2. It is the case of the prosecution that on 15.7.2016, at about

3.30 a.m., Dighi Police had taken down a report of one Shubham Fuge. He had disclosed to the police that on 14.7.2016, he had received a phone call from Atul Mohite requesting him to bring his father for the birthday party of one his friend at Dighi. He had also extended the request to his father. At about 10.53 p.m., he was attempting to call his father. The phone was switched off. He had called upon his mother who informed him that his father Dattatray was at Dighi at the relevant time and therefore, he along with his friend Rohan had been to Hotel Chandradeep to take a parcel and then at about 11.15 p.m., he was proceeding towards Dighi along with his friend Rohan Panchal in his I-20 Car. When he was passing through Bharatmata Nagar at 11.30 p.m., he had seen that his father was being assaulted in the open space by Atul Mohite who was pelting huge stone on the face of his father. According to him, he had also seen Bala Walke assaulting his father with a stone. That Bala Welke was accompanied by his two nephews – one was armed with sattur and he was assaulting Dattatray with sattur and the other person was armed with sword and he was assaulting his father with a sword. He has also stated that the applicant in Criminal Bail Application No.2891 of 2017 viz. Shailesh was assaulting his father with fist and kick blows and Prem Dholpuria – applicant in Criminal

bail Application No.2668 of 2017 was assaulting his father with some deadly weapon. Similarly, Babu had assaulted with a chopper and all of them were accompanied by another two persons. He was scared. He dialled 100 number and called the police. He also called upon his brother-in-law Shivaji Borade and in the interregnum all the accused/assailants had fled from the spot. On the basis of the said report, Crime No.121 2016 was registered at Dighi Police Station.

3. The present applicants were arrested from their house on 15.7.2016 in the morning.

4. The learned Senior Counsel appearing for the applicant – Shailesh has drawn attention of this Court to the statement of Rohan Panchal and other witnesses. It is submitted that the only role that is ascribed to the applicants is that he was assaulting the deceased with fist and kick blows.

5. As far as the applicant Prem Dholpuriya is concerned, the learned counsel for the applicant submits that the applicant was produced before the Court on 16.7.2016. At that time, he had disclosed to the learned Magistrate by filing an application that his brother Deepak was admitted in Jehangir Hospital and at the relevant time i.e. the time when the incident

had taken place, he had been to Jehangir Hospital to meet his brother. He had also requested the Magistrate to call for the C.C.TV footage from the Jehangir Hospital. The learned Magistrate had taken cognizance of the said application and had directed the Investigating agency to look into the same. Thereafter, the present applicant and 3 others had filed an application before the learned Magistrate requesting the Court to call for the call details record of their respective cellphones in order to substantiate that they were not present at Bharatmata Nagar, Dighi at the time of incident. Similarly, the accused had also filed an application under Section 91 of Cr.P.C. on 2.12.2016 requesting the court to call for the call details record of the complainant by mentioning the name and number as 8793505050. The learned Addl. Sessions Judge, Pune, by his order dated 25.1.2017, had called for the report and the same is placed on record by the applicants.

6. Perused the papers of investigation.

7. The learned APP submits that besides Shubham Phuge, Rahul who was accompanying the complainant has also ascribed the same role to the applicant. Rahul Panchal has also posed as an eye-witness. The statement of Dinesh Mangani @ Mady who was working as office boy with the deceased was recorded on 15.7.2016. According to him, deceased

was in the company of Atul Mohite. He was driving the car. Thereafter, he had heard Atul Mohite demanding Rs.9 lakhs from Dattatray. The car was parked in the open space at Bharatmata Nagar. Atul was accompanied by his friend Tushar at the relevant time. He has also disclosed that the deceased had sent Mady to get the other boys and also the cake and he had left the spot immediately and was standing at Charholi Phata at about 11.15 p.m. He had tried to call Dattatray. However, there was no reply. The investigating agency has also recorded the statement of Mahesh Surywanshi on 16.7.2016 who was also crossing the same spot at about 11.30 p.m. He had seen Atul Mohite and Shaukat Attar hitting Dattaray with stones and Sushant @ Babu Pawar and Tushar Jadhav were assaulting Datta with sickle. He had also heard the cries of Dattabhau. According to the learned APP, taking into consideration the statement of the complainant and Rohan Panchal, the applicants do not deserve to be enlarged on bail.

8. The respective counsel submit that taking into consideration the statements of Mahesh Suryawanshi who was also an eye-witness, it is clear that there were only four persons who were in fact assaulting Datta at the relevant time and therefore, the present applicants deserve to be enlarged on bail.

9. Upon perusal of the papers of investigation, more particularly the statement of the sister of the complainant and the mother of the complainant as well as the brother-in-law who had reached first in point of time, it is clear that when they reached the spot, they had not seen Rohan Panchal along with the present applicants and Shubham was alone who was crying. Therefore, respective counsel submit that Rohan Panchal happens to be a got up witness only to corroborate the version of the complainant. It is also clear from the papers of investigation that there was no electricity supply in Bharatmata Nagar area at the relevant time. The call details record would clearly indicate that the applicant Dholpuriya was not in Dighi area at the relevant time nay it is relevant to observe that the call details record of the complainant would also indicate that he was not in Bharatmata Nagar between 11 to 11.30 p.m. It is further pertinent to note that the investigating agency has not placed on record the station diary to show that at what time they had received the phone call from the cellphone of the complainant. There are eye-witnesses who would also substantiate the contentions of the present applicant to the extent that the deceased was assaulted by four persons named by Mahesh Suryawanshi. Column No.17 shows that there are four injuries on the person of deceased. The post-

mortem report would show that there are chop wounds on right temporo-parietal occipital area and on the scalp there are contused lacerated wounds and multiple contused abrasions. The cause of death is head injury. Upon considering the papers of investigation, more particularly the statement of Mahesh Suryawanshi and the other family members of the deceased, it appears that the incident has been blown out of proportion by the complainant and Rohan Panchal. It appears that the motive for assault was that the deceased was running Bishi Chit Fund. He owed huge amounts to people. At the relevant time, Atul Mohite was in need of money. He had demanded the same. he was last seen in the company of the deceased. He was accompanied by Shaukat Attar, Sushant Pawar and Tushar Jadhav. It is further pertinent to note that according to the prosecution, there are in all 9 accused persons and the first informant had seen all of them assaulting his father. He has specifically stated that after the assault, the accused persons had fled from the spot. Within no time the police had reached there. However, they could not trace any of the accused in the nearby area. The car of the deceased was on the spot. Taking into consideration the compilation of the charge sheet, the call details record, the statement of Mahesh Suryawanshi and the submissions advanced across the bar, this

Court is of the opinion that both the applicants deserve to be enlarged on bail.

10. It is made clear that the above observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The applications are allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bonds in the sum of Rs.50,000/- each with one or more solvent sureties in the like amount.
- (iii) The applicants shall not enter into the jurisdiction of Bhosari Police Station, Dighi Police Station and Vishrantwadi Police Station till conclusion of the trial.

Both the Applicants stand dispose of.

(SMT. SADHANA S.JADHAV, J.)