

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

BAIL APPLICATION NO. 2684 OF 2017

Kiran Namdeo Jadhav.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Khan Fakhruddin, advocate for Applicant.

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

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 19, 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 an accused in Sessions Case No. 184 of 2015 pending before the Additional Sessions Judge at Nashik.

3 At the outset, the APP has submitted upon written instructions
that the trial has commenced, prosecution has recorded substantive
evidence of two witnesses and the next scheduled date is 24/1/2018.

4 This Court was not inclined to consider the application on
merits. Since trial has commenced, it would not be appropriate to
consider an application under section 439 of the Code of Criminal
Procedure, 1973 on merits.

5 The learned Counsel for the applicant submits that by an order
dated 5/2/2016 this Court (Coram : Anuja Prabhudesai,J) had
passed the following order :

“1 Mr. Salunkhe, the learned counsel for the applicant, upon
instructions seeks leave to withdraw the application with liberty
to file a fresh application after the evidence of witnesses is
recorded.

2. Leave with liberty is granted. Application is dismissed as
withdrawn.”

After perusing the said order, this Court has enquired with the
learned Counsel as to whether he desires to make an application to

the Registrar requesting the Registrar to place the matter before the same bench, which may consider it on merits, if necessary. However, the learned Counsel for the applicant submits that he desires to proceed with the matter on merits and would not move an application to place the matter before the Hon'ble Smt. Justice Anuja Prabhudessai. It is more than clear from the order that the Hon'ble Court had granted liberty to file a fresh application after the evidence of witnesses is recorded and as on today two witnesses are recorded and the prosecution is yet to record the evidence of several witnesses. It is in these circumstances that this Court has proceeded to hear the application on merits.

6 It is the prosecution case that on 16/2/2015 Nana Borse who happens to be the father of Ravindra Borse lodged a report at the police station that his son Ravindra was studying in Sandip Foundation and was prosecuting his Engineering Course in Electronic and Telecommunication. He had failed in the third year and therefore, there was a year-drop. It is further reported that on 16/2/2015 at about 9.30 a.m. Ravindra had been to college for

attending cultural programme and thereafter, at 1.30 p.m. one of the friend of Ravindra had informed his father that Ravindra had sustained serious injuries and he has been taken to Civil Hospital, Nashik. Upon enquiry, the first informant had learnt that on that day Divyesh Aware and Kiran Jadhav i.e. the present applicant had stabbed his son.

7 In the course of investigation, the investigating agency had also seen C.C.T.V. Footage, which clearly shows involvement of the present applicant so much so, that in the images captured on CCTV footage, it is seen that Kiran Jadhav i.e. the present applicant alongwith other accused had chased Ravindra Borse and thereafter, Divyesh had dragged Ravindra and stabbed him and the transcript of the CCTV also shows that all the boys were exchanging knife. This is a case of direct evidence. A young boy has lost his life.

8 The applicant is being prosecuted for an offence punishable under section 302 read with section 34 of the Indian Penal Code. Hence, the submission that his role can be distinguished from that of

Divyesh also cannot be considered, more particularly, since the trial has commenced. Hence, the application being sans merits, stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)