

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

BAIL APPLICATION NO.2875 OF 2017

Ramdas Bhanudas Gavde		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Priyal G. Sarda for the Applicant.
Ms. Veera Shinde, APP for the State.

Mr. A.M. Lonikar, PSI, Khed Police Station present.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 23rd January, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 20th May, 2017 in Crime No.178 of 2017, registered at Khed police station, Pune for the offences punishable under Sections 302, 143, 147, 149, 504, 506 Indian Penal Code.

3 It is the case of the prosecution that one Sangita Lanku Vadhane lodged a report at the police station alleging therein that on 16th May, 2017, at about 8.00 am., her son Chetan had left the house as he was working as a Waiter in Sandu Patil's Restaurant and Sweets. That on the same day, in the afternoon, at about 4.30 pm., she was informed that her son Chetan had been taken to Dr. Arvikar of Vimaldatta Hospital. She rushed to the hospital. Upon enquiry, she learnt that her son was assaulted by the customers on the ground that he had not given lemon to them. It is alleged that five persons had assaulted him with fist and kicks blows till he lost his consciousness. The first informant had enquired with her son about the names of the assailants and he had informed that he was assaulted by Pravin Rickshawala and his four friends. He had disclosed to his mother that there was an altercation between him and the customers and at that time, he was assaulted. When he was taking treatment, he had succumbed to death.

4 It is pertinent to note that on 16th May, 2017, at about 8.37 pm, Sangita i.e. the first informant had lodged a report at the police station about the assault on her son and on the basis of the said report, N.C. No.779 of 2017 was registered against Pravin Rickshawala and his friends.

5 Upon perusal of the post-mortem notes, it appears that the deceased had not sustained injuries. There were abrasions. Column nos. 19 also shows that there was scalp haematoma present at right temporal area. That column no. 29 shows that there was perforation of 1x1 cm. in stomach.

6 Upon enquiry made to the learned APP, it is submitted that deceased was not operated. Initially A/D No. 45 of 2017 was registered and subsequently upon lodging the F.I.R., the offence was registered against the applicant under Section 302 Indian Penal Code.

7 Learned counsel for the applicant submits that the applicant in all probabilities had assaulted the deceased on the spur of moment without any pre-meditation. That no weapons were used and the applicant had allegedly assaulted with first and kicks blows not knowing as to whether the deceased was suffering from any other disease. It is pertinent to note that the deceased was conscious in the hospital. In spite of the fact that, there was perforation in stomach, the deceased was not operated and hence, the learned counsel submits that the possibility that medical negligence being a cause of his death cannot be ruled out. In the above facts and upon considering the submissions of the learned counsel for the applicant, this Court is of the opinion that the applicant deserves to be enlarged on bail.

8 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed.

2 The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

3 The applicant shall report to the concerned police station on 1st and 3rd Mondays of each month till framing of charge.

(*Smt. Sadhana S. Jadhav, J*)