

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2908 OF 2015

SHAHRUKH S/O RAJAK SHAIKH

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Sadaphule Rajendra S.

APP for Respondent State: Mr. S. A. Ambad

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CORAM : T. V. NALAWADE**DATE : 16th July, 2015****PER COURT :**

1. The application is filed for bail. Both the sides are heard. This Court perused the papers of investigation. This is the third application filed for bail by the applicant accused. Previsions application for bail, Criminal Application No. 6282/2014, is rejected on merit by this Court.

2. Learned counsel for the applicant submits that the applicant is behind bars for more than one year and six months and as the trial Court could not dispose of the case within a period of three months as fixed by this Court in Criminal Application No. 6282/2014, the applicant is entitled to get bail. Learned counsel for the applicant advanced arguments under Article 21 of the Constitution of India. Learned counsel for the applicant submitted that the applicant is behind bars for 1 year and six months and he is entitled to bail as the said period is almost 50% period of sentence which can be given. This proposition is not acceptable. For the offences punishable under section 307 IPC there is life imprisonment and the aforesaid period cannot treated as 50% of imprisonment provided for offence.

3. In the previous order, this Court has considered direct evidence against the present applicant. There is allegation that he fired one shot from pistol at injured eye witness. That was an attempt on life. During the course of investigation, pistol came to be recovered from the applicant.

Bullet which caused injury was found in the body of the injured and it was taken out by the Doctor who gave treatment. One live cartridge was also recovered. The live cartridge, bullet found inside the body and pistol were sent to the Director of Forensic Science and Ballistic Expert by the Investigating Agency. There is medical record to show that there was bullet injury and there is expert's evidence showing that the injury was caused by 7.65 mm pistol bullet. The report further shows that the bullet was 7.65 mm pistol bullet and the live cartridge was also from 7.6 mm pistol bullet. Live cartridge was tested and pistol was in working condition. Prior to that, residue of gunpowder was found in the barrel of pistol showing that pistol was used.

4. Aforesaid material, which is expert's evidence and admissible, is there in addition to the direct evidence. There was an attempt on life. Injury was caused just above the left nipple on the chest and it can be said that the injured was fortunate that bullet did not penetrate heart and other vital organs. In such a case, there is always danger to the life of injured. The applicant showed courage to fire bullet on the person of eye witness and there is evidence of aforesaid nature which is very strong. Considering the possibility of danger to the life of injured and tempering with the witnesses, this Court holds that this is not a fit case to grant relief of bail to the applicant.

5. The criminal application is dismissed.

(T. V. NALAWADE, J.)

JPC