IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.

CRIMINAL APPLICATION NO. 2962 OF 2015.

SAGAR S/O ASHOK BAIG.
VERSUS
THE STATE OF MAHARASHTRA.

Appearance =>

Mr. Pathan Yunus Basheer, Advocate for the Applicant.

Mrs. Pratibha Bharad, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 23rd July, 2015.

Per Court :-

Present Criminal Application is filed by the Applicant for grant of regular bail in connection with CR No.252/2012 registered with Police Station, Shirdi, Taluka – Rahata, District - Ahmednagar for the offences punishable under Section/s. 302, 323, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/15 Arms Act and under Section 37(1)(3)/135 of the Bombay Police Act.

[2] Heard Mr. Pathan Yunus Basheer, learned counsel for the Applicant and Mrs. Pratibha Bharad, learned Additional Public Prosecutor for the State.

[3] Investigating agency has already completed its entire investigation and charge sheet is already filed before the court of law. Present Applicant is shown as accused No.7 in the challan. He is arrested on 16th September, 2013 and since then he is languishing in jail.

[4] Deceased is Shivaji Kale. First Information Report is lodged by widow – Mangal Shivaji Kale. From the First Information Report it is clear that, son of the first informant by name Sagar was in jail. First Information Report further states that the first informant, her other son – Raju and deceased Shivaji were intending to visit Nashik Jail; where-in Sagar was lodged, since they heard news that quarrel took place inside the jail and some inmates were attacked. First Information Report further states that on the date of occurrence at 7.30 p.m., 15 to 18 persons barged into the court yard of the first informant and tried to assault the Raju. At that time, when deceased Shivaji tried to intervene, those persons made murderous assault on Shivaji, resulting into his death.

[5] What is important to note is that all the named persons in the First Information Report are already released on bail by the learned trial court, except the present Applicant.

[6] From the First Information Report and from other material available on record, it is clear that role ascribed to the present Applicant is similar to the role that ascribed by the first informant and other prosecution witnesses against the other co-accused, who are already released on bail, by the trial court.

[7] Mrs. Bharad, learned Additional Public Prosecutor is fair in submitting that the present Applicant is entitled to be release on bail on principle of parity however, she submitted that after the release of other co-accused persons, due to their conduct, present Applicant should not be released on bail.

Such an argument, in my view, is highly misplaced. If the persons who are already released on bail are flouting any of the condition imposed upon them by the court then it is for the investigating agency to take necessary steps for cancellation of their bail however, till today, no such application is moved. Merely because other co-accused who are released on bail are flouting the conditions, that cannot be a ground for rejection of bail of the present Applicant, especially when the role attributed to him is identical to the other persons who are already released on bail.

[7] Further according to the learned Additional Public Prosecutor, present Applicant is having criminal antecedents. Mr. Pathan Yunus Basheer, learned counsel for the Applicant has submitted that present Applicant is having criminal antecedents however, he is already acquitted by the competent court.

[8] In that view of the matter, I think, this is a fit case wherein Applicant can be released on bail, by imposing certain conditions. That leads me to pass the following order **:-**

ORDER

(i) Criminal Application is allowed.

(ii) Applicant **-** SAGAR S/O ASHOK BAIG shall be released on regular bail on he executing P.R. Bond of Rs. 50,000/- [Rs. Fifty Thousand.] with two solvent sureties in the like amount, in connection with CR No.252/2012 registered with Police Station, Shirdi, Taluka – Rahata, District - Ahmednagar for the offences punishable under Section/s. 302, 323, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/15 Arms Act and under Section 37(1)(3)/135 of the Bombay Police Act.

(iii) The Applicant shall attend the Police Station, Shirdi, District - Ahmednagar twice in a week, preferably on every Sunday and Thursday, between 3.00 p.m. to 5.00 p.m, till trial is over.

(iv) With this Criminal Application is allowed and same is disposed of, accordingly.

(V.M. DESHPANDE, J.)