

office of Advocate Shahid Azami. After the incident, Indersing lodged a report with the police, which was treated as the FIR.

4. Advocate Azami succumbed to the injuries sustained by him.

5. Initially, Indersing had stated that two out of the three culprits had firearms with them, but, in his supplementary statement recorded on 12/02/2010, he stated that even the third one was having a pistol.

6. In the course of investigation, including the applicant, four persons came to be arrested. The applicant and one Devendra Jagtap alias J.D. came to be arrested on 16/02/2010 apparently, on the basis of secrete information available with the police. Personal search of the applicant and the said accused J.D. was taken in the presence of panchas. A key was found with each of them.

7. The material against the applicant consists of his identification as one of the three culprits made by Indersing, in a Test Identification Parade held in the course of investigation, and the recovery of a firearm said to have been used in the commission of the offence.

8. It appears that pursuant to a disclosure statement made by the applicant, a pistol allegedly came to be recovered. However, the same came to be recovered from the room belonging to the co-accused J.D.

9. It is the case of the Investigating Agency that as per the report of the Ballistic Expert, some of the bullets that had been fired during the incident, were from the pistol recovered at the instance of the applicant. The learned counsel for the applicant, however, contended that there is a discrepancy in that regard and the description of the firearm said to have been recovered at the instance of the applicant and the description of the firearm that was sent to the Ballistic Expert, does not match.

10. The applicant was identified by the Indersing in a Test Identification Parade (TIP) held on 05/03/2010. The learned counsel for the applicant contended that the co-accused Devendra Jagtap was also placed in the TIP on the same day and immediately before the TIP in respect of the applicant was held; and that, two of the dummies selected in both these parade were same.

11. I have carefully considered the matter.

12. The applicant is in custody since last more than five years. The trial has not yet commenced. Even a charge has not yet been framed.

13. The case rests basically on the identification of the applicant as one of the assailants by a solitary witness. No role was attributed to the applicant by Indersing while identifying him in T.I.Parade. No supplementary statement of Indersing after the T.I.Parade was recorded.

14. One of the weapons used in the incident is said to have been recovered at the instance of accused, but from the room of another accused.

15. No antecedents are reported. The motive for committing the alleged offence is not suggested.

16. Considering all the relevant aspects of the matter, I am inclined to release the applicant on bail, subject to certain conditions.

17. The application is allowed.

18. The applicant is ordered to be released on bail in the sum of Rs.50,000/-, with one surety in like amount on the condition that he shall not contact, meet or approach the First Informant, or any other witness, in any manner whatsoever.

19. The trial Court shall expedite the trial and shall complete it, within a period of nine months from today.

(ABHAY M. THIPSAY J.)