

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1677 OF 2014

Kailash Vishnu Shinde	...	Applicant
vs.		(Orig. accused No.1)
The State of Maharashtra	...	Respondents

Mr. Nitin Pradhan a/w Ms. Amita Kuttikrishnan, Advocate for the applicant
Mr.A.S.Shitole, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 12th January, 2015.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 13.12.2013 in Crime No. 190 of 2013 registered at Wadiware Police Station for the offence punishable under Sections 302, 120-B read with Section 34 of Indian Penal Code. The investigation is completed and charge-sheet was filed on 11.3.2014.

2. It is the case of the prosecution that on 13.12.2013, Sanjay Mate lodged a report at the police station alleging therein that his brother Sampat was a wrestler. That the applicant herein also happens to be a wrestler. They were competitors in the said sport. They were affiliated to of rival political parties. It

is the case of the prosecution that on 11th and 12th December, 2013, the complainant and his brother Sampat were collecting necessary documents to file the nomination form for the Gram Panchayat elections. It was known in the village that Sampat is going to contest elections for the Gram Panchayat. On 13th December, 2013, Sampat was sleeping in the cattle shed which is at a distance of 20 to 25 feet beyond the residential house. The complainant has alleged that within 10 – 15 minutes after Satish had retired over the bed, he heard cry of Sampat a knife embedded in his chest. The complainant rushed to the cattle shed. He saw that his brother was holding his chest. Upon enquiry by the first informant, Sampat alleged to have disclosed to the first informant that “Kailya” has fled after assaulting. He was being taken to the hospital. He succumbed to the said injury on the way. According to the first information report, there was a dispute between the present applicant who name happened to be Kailash Vishnu Shinde and, according to the informant the applicant had caused homicidal death of Sampat.

3. Perused the papers of investigation. The statement of one witness Sagar was recorded under Section 161 of Cr.P.C. It appears that the said witness was in the company of the applicant on the date of the incident i.e. on 13th December, 2013. He has disclosed that he had heard the present applicant telling

other friends that there is political rivalry between deceased and the applicant and that it would be necessary to eliminate him or else he would pose tough competition at the time of Gram Panchayat elections. He has disclosed in his previous statement that Kailash and Satish had left the farm house of Kailash and had gone to some unknown place. He had disclosed that the motorcycle of Satish was punctured and, therefore, Satish Gomare had taken the motorcycle of the witness and had accompanied the present applicant to the cattle shed.

4. The learned APP submits that on the basis of this statement that the applicant had a strong motive to eliminate Sampat and he had made all preparations to eliminate him. Sagar is not an eye-witness to the incident, but his motorcycle was taken by the co-accused Satish Gomare. That Satish Gomare has been enlarged on bail on the ground that his name does not appear in the first information report. The statement of Sagar is also recorded under Section 164 of Cr.P.C. There is inconsistency in the statement under Section 161 and 164 of Cr.P.C. The statement under Section 164 of Cr.P.C. reveals that it is a case of hearsay evidence.

5. The only evidence against the present applicant is the disclosure of the name of "Kailya" in the first information report. The learned APP fairly submits that there is no investigation as to how many Kailash or Kailya were residing in the said village. It is presumed that it could be only the present

applicant who had motive to eliminate the deceased. The evidence is in the firm of circumstantial evidence. The applicant has been in jail for more than one year. The investigation is completed and charge-sheet is filed. The applicant has made out a prima facie case for grant of bail.

6. The observations made hereinabove are prima facie in nature and shall not be considered at the time of hearing of discharge application or at the time of trial.

ORDER

(i) The application is allowed. The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

(ii) The applicant shall report to the Igatpuri Police Station on every Sunday between 10 a.m. to 12 noon till conclusion of the trial.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)