

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 2246 OF 2014

Mr. Dhaku Bhambu Margale	...	Applicant
vs.		(Orig. accused)
The State of Maharashtra	...	Respondent

Mr. D.S.Mhaispurkar, Advocate i/b. Mr. Sameert Mangaonkar, for the applicant
Mrs. Veera Shinde,, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 3rd February, 2015.

P.C.

Heard. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 30.1.2014 in C.R. No.9 of 2014 registered at Velhe Police Station for the offence punishable under Section 302 of Indian Penal Code and Section 3(25) of the Arms Act.

2. It is the case of the prosecution that on 27.1.2014, Maruti son of Balu Margale lodged a report at the police station alleging therein that on 26.1.2014, the present applicant, who happens to be the co-brother of Balu Margale called him to Ambegaon Khurd. That Balu Margale had informed his wife that he is going to visit the present applicant. On 27.1.2014, the maternal cousin of the complainant Maruti namely Balasaheb Rambhau Margale informed him on the

cellphone that he would be arriving to his house. Thereafter, they both proceeded on a motorcycle and went to the house of the present applicant at Ambegaon. The present applicant was not at home, but his cousin Suresh Margale was at home. People had gathered at the said house. Upon enquiry, Suresh had informed the complainant that on 26.1.2014 at about 8.30 a.m., he along with Balu Margale and Dhaku Margale i.e. the present applicant had been for hunting near Jogoba Temple. That Balu Margale was carrying his rifle along with him. They had also taken batteries. At about 10.30 p.m, they were searching for a prey for hunting. Suddenly, Suresh heard the firing of the rifle and a cry. When he went to the spot, he saw that Balu Margale had sustained a bullet injury on his chest. It is alleged that the applicant informed Suresh that he had accidentally killed Balu. That he had requested Suresh not to inform about the said incident to anybody. The people had enquired about the place where the dead body was abandoned. Suresh had expressed his inability to show the place in the forest. However, they had proceeded on the said road and at a distance of 1 km. From Jogoba Temple, they had traced the dead body of Balu Margale. The body was sent to Sassoon Hospital for performing autopsy. On the basis of the said report, Crime No. 9 of 2014 was registered at Velhe Police Station.

3. The papers of investigation would show that the Police Naik of Velhe

Police Station had seen the body in the deep valley of Kirkatwadi. The post-mortem notes show that the cause of death was due to firearm injuries. The applicant was arrested. The Investigating Officer recorded the statement of Suresh Margale under Section 161 of Cr.P.C. Suresh had specifically disclosed to the police that the deceased Balu Margale had carried his rifle for the purpose of hunting. He has specifically stated that in the night when they were searching for a prey, they had actually seen some animal behind the tree. That Balu was carrying an iron knife. He had given the rifle to the present applicant. Dhaku and Balu Margale had started running in the direction of the prey. Dhaku had requested Suresh to follow them. He had heard the noise of the rifle and by the time he reached, Balu had collapsed on the ground.

4. The learned counsel for the applicant submits that in fact, there was no motive nor pre-meditation. That the weapons were carried by the deceased. That there was no enmity between them. That it can be said that it is a case of accident and the present applicant had only fired in the direction of the prey. However, in the darkness, it had hit Balu Margale.

5. Taking into consideration the papers of investigation, more particularly the statements of the eye-witnesses, this Court is of the opinion that

the applicant has made out a prima facie case for grant of bail.

6. The observations made hereiabove are prima facie in nature and the Sessions Court shall not be influenced by those observations while deciding the application for quashing the FIR, discharge application or at the time of trial.

ORDER

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.

The application is allowed and disposed of in the above terms.

(SMT.SADHANA S.JADHAV, J.)