

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2463 OF 2014

Ashwin Ranchhod @ Badu Patel		
s/o. Ranchhod Patel	...	Applicant
Vs.		
Union Territory of Daman and Diu	...	Respondent

Mr. H. H. Ponda, Advocate for the Applicant.
 Mr. D.A. Nalavade, Advocate for Respondent/Union Territory of Daman & Diu.
 Mr. J.H. Ramugade, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
 DATE : **17th April , 2015**

P.C.:

This Application is moved for bail, as the applicant/accused is facing charges under section 302, 201 r/w. 34 of the Indian Penal Code and sections 3, 25(1) of the Arms Act. One Manish Nanubhai Patel gave information to the police, pursuant to which, an offence was registered at C.R. No. 35 of 2014 with Nani Daman Police Station.

2. It is the case of the prosecution that the applicant/accused and co-accused Ajay had developed hostility with deceased Dipak on the ground of picking up scrap material from the various places in the city. They have threatened each other and ultimately on 29th March, 2014 at around 3.50 p.m. when deceased Dipak alias Ishwar took his motorcycle from Coastal Highway Char Rasta area, at that time, the applicant/accused Ashwin and

co-accused Ajay Patel arrived there at Innova car and Ajay fired at him through pistol. The deceased sustained injuries and then applicant/accused and co-accused Ajay Patel fled away. The applicant/accused thereafter was arrested on 1st June, 2014 and principal accused Ajay was arrested on 14th May, 2014. Hence, this Bail Application.

3. The learned senior counsel for the applicant submitted that the applicant/accused has not committed any offence much less the offence of killing the deceased on that day. He submitted that against this applicant/accused, three eye witnesses have given statements. He relied on the statements of Shankar Venaram Devasi, Yogesh Naginabhai Patel and Kantibhai Dhedkabhai Patel. The learned senior counsel submitted that the statement of Yogesh Patel was recorded on 18th May, 2014 that he has seen the incident. Yogesh has also acted as panch, however, he did not disclose that he has seen the incident. The statement of Kantibhai was not recorded on 29th March or 30th March but it was recorded on 1st April, 2014. In the statement of Shankar Devasi and Kantibhai Patel, they both have stated that it was Ajay who had fired at the deceased and they have stated that the applicant/accused was only sitting on the adjoining seat of the driver and thereafter they fled away. He submitted that besides these statements, there is no evidence against the applicant/accused and

therefore, the applicant/accused be released on bail.

4. Learned APP while opposing this Application pointed out that there are statements of other witnesses which throw light on the motive that the applicant/accused and co-accused had animus against the deceased. There was meeting of minds of these two persons on the previous night. He submitted that eye witnesses have seen the applicant/accused running away with co-accused in the Innova. The applicant was absconding and the police could not nab him till 1st June, 2014. This shows his conduct. The learned APP further submitted that there are three criminal cases at the credit of applicant, out of which one was of murder in which the applicant/accused was acquitted, as the other witnesses turned hostile. He submitted that there is terror of applicant/accused in the city and witnesses need protection. Hence, the bail be rejected.

5. Perused the FIR and the statements of eye witnesses and other witnesses as pointed out by the learned APP and learned defence senior counsel. The role attributed to the applicant/accused is not of an assailant. The pistol was fired by the co-accused Ajay Patel. The applicant/accused, at the relevant time, was sitting in the Innova car on the adjoining seat of the driver. Even if this and the case of prosecution on the motive is taken as it is, it appears *prima facie* that the applicant/accused

was having enmity against the deceased, as they were involved in the same business of scrap lifting. There was motive to eliminate the deceased, however, the actual act of firing is not attributed to the applicant/accused. The statements on the point of antecedents made by the learned APP are true that three criminal cases are registered against the applicant/accused, though he is acquitted from the charge of section 302 in one of the cases, as the witnesses turned hostile. Considering this and also the allegations made against the applicant/accused and the nature of offence, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- (i) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) The applicant shall not commit any offence of any nature and if an offence is committed, then the bail shall be cancelled forthwith and the prosecution shall take steps immediately.
- (iii) The applicant shall not pressurize any witnesses and shall not tamper the evidence.
- (iv) Any complaint from the witnesses about tampering shall amount to cancellation of bail.

- (v) The applicant/accused shall make himself available and attend all the Court dates;
- (vi) The applicant/accused shall not abscond and shall furnish his permanent address to the police along with address proof, in case of change in residence.
- (vii) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.
- (viii) The applicant/accused shall not leave India without the prior permission of the Court.

6. The Application stands disposed of on above terms.

(MRS.MRIDULA BHATKAR, J.)