

Ladda

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION No. 156 of 2016

Vijay @ Vicky Ashok Singh	..Applicant.
Vs	
The State of Maharashtra	..Respondent.

Mr P. G. Pandey for the Applicant.

Ms A. T. Javeri, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.
DATE : 18th February, 2016

P.C.

1) This is an application under section 439 of the Code of Criminal Procedure. The applicant is seeking bail in CR No. 456/2014 dated 18.12.2014 registered with Bhandup Police Station, Mumbai for the offence punishable under sections 307, 452, 394, 397, 506 (II) of the IPC and under sections 3 and 25 of the Indian Arms Act.

2) The complainant Shri Devavrat Mishra was the owner of Arunoday Bar and Restaurant situated at Pratapnagar, Bhandup (West). That on 17.12.2014 at about 23:45 (11:45 p.m.) when the complainant was sitting on the counter of the said hotel, the

applicant came there. The applicant was having a sword in his hand and started abusing the complainant. The applicant also gave a blow by the said sword on the head of the complainant. At that time, one of the waiters from the hotel pulled down the shutter. Two other persons came to the help of the complainant. The applicant, thereafter, took out a country made handgun from the pocket of his pant and fired two rounds at the direction of the complainant. The waiter, namely Shivsagar Gaud tried to catch hold the applicant. However, the applicant bite on the left hand of said waiter. Due to the firing, the waiter, namely Vikaskumar Rajat suffered injury to his right foot. The complainant and two waiters thereafter overpowered the applicant and confined him in the toilet of the said hotel. The applicant broke opened the said door, came out and pointed the country-made handgun towards the complainant and waiters and demanded the key of the shutter. At that time, the waiter Shivsagar Gaud snatched the said country-made handgun from the hands of the applicant and kept it on the counter. The applicant some-how succeeded in getting the key of the shutter. The applicant opened the shutter and thereafter threatened the persons inside the hotel with the sword and left the spot. After lodgment of the First

Information Report (FIR) the police conducted the investigation and after completion of the same have filed charge-sheet in the present case.

3) Heard the learned counsel for the applicant at length and the learned APP and with their able assistance, I have also perused the entire charge-sheet annexed to the present application.

4) The learned counsel for the applicant submitted that the version as given by the complainant cannot be believed because the complainant in his FIR has stated that the applicant fired two rounds. However, the other inmates of the said hotel in their statements have stated that only one bullet was fired and therefore, the statement of the complainant creates doubt. He further submitted that it is not probable that the applicant instead of taking the handgun in his hand which was kept on the counter, searched for the keys of the shutter. That though there is no mention about the fact that the applicant was also having a chopper in his possession, the police have seized one chopper from the spot which according to the learned counsel was, in fact, planted by the investigating agency. He further submitted that there are many contradictions in the statements of the witnesses interse. That in the present case the

applicant has been falsely implicated by the complainant due to the previous enmity. He, therefore, prayed that the applicant may be released on bail.

5) The learned APP opposed the present application and submitted the report dated 17.2.2016 issued by the Police Inspector, Bhandup Police Station, Mumbai thereby placing on record the antecedents of the applicant. The learned APP also drew my attention to the Ballistic Expert's Report pertaining to the handgun which was used by the applicant and was seized by the police from the spot.

6) The record discloses that the applicant entered the hotel of the complainant at about 11:45 p.m. on the date of the incident with sword in his hand. As per the statement of the complainant, the applicant gave a blow with the sword on the head of the complainant. The medical certificate issued by the Medical Officer, Government Hospital, Mulund (West) discloses that the complainant has received a CLW on the frontal parietal region, admeasuring 4x1.5 cm. Thus, the version of assault by sword to the complainant is duly corroborated by the said medical certificate.

7) The medical certificate of Vikas Kumar Rajat discloses that, he

received an abrasion wound on the right foot ad-measuring 2x1 cm. It is the prosecution case that the said wound was received by the said witness due to the firing by the applicant from country-made handgun (Katta). The Ballistic Expert's Report dated 8.5.2015 discloses that the deformed (soft nose) copper jacketed bullet tally with that of the bullet fired from the country-made handgun and the same was fired from the said gun which is Exh-1. It further discloses that the Exh-1 i.e. the country-made handgun was used for firing prior to its receipt in the laboratory. The said handgun was seized by the police from the scene of offence. The record further discloses that at the instance of the applicant a sword was discovered by effecting a discovery panchnama dated 23.12.2014. The evidence on record discloses the clear complicity of the applicant in the present crime.

8) Apart from the above, it is to be noted here that as per the police report, the applicant is also involved in three other crimes registered with Bhandup police station. That the applicant was absconding after committing crime No.429/2014 under sections 326, 504 read with section 34 of the IPC and during the said period he has committed the present crime. After taking into consideration

the aforesaid facts and circumstances, I am of the opinion that this is not a case to release the applicant on bail. The present application is accordingly dismissed.

(A.S.GADKARI, J.)