

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 265 OF 2016

Santosh Macchindra Jagtap (Koli) ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Rahul K. Dhaigude, Advocate for the Applicant.

Mr. Deepak Thakery, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 18th JULY, 2016

P.C. :

1 The applicant/accused in Crime No. 46 of 2013 for the offences punishable under sections 302, 307, 143, 147, 148, 149, 120(B) (1) and 201 of the Indian Penal Code, under section 3(25) of the Arms Act, under section 7(1)(d) of the Protection of Civil Rights Act and under section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered with Walchandnagar Police Station, Dist. Pune, by this application under section 439 of the Criminal Procedure Code, is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. He argued that vide order dated 15th October, 2013 passed in bail application no.1421 of 2013, co-

accused by name- Nitin @ Shital Bhimrao Kharat was released on bail by this court, inter-alia, by observing that identification by 4 witnesses in identification parade within a period of 15 minutes is not possible by any stretch of imagination. Learned counsel for the present applicant / accused further argued that eye witnesses have not given description of the accused persons. Learned counsel argued that there is no evidence to connect the present applicant/accused to the crime in question.

3 Learned APP opposed the application by submitting that there are eye witnesses to the incident in question and the applicant is having criminal antecedents.

4 Perused the chargesheet as well as the order dated 15th October, 2013 passed below bail application no. 1421 of 2013. While deciding the said application, this court has observed that by no stretch of imagination it is possible for the four identifying witnesses to identify the accused at a time in between 5 p.m. to 5.15 p.m. i.e. all at the same time. It is also observed that the said applicant is a student of 19 years of age with no criminal antecedents. Hence, he was released on bail.

5 It is the case of the prosecution that informant-Dada Shivaji Jadhav and his friend one-Chandrakant Gaikwad (since deceased) were seated in front of the hotel of Dada Jadhav on 12.02.2013. At that time, one bolero vehicle came

from the front direction and it rashly came on person of the informant as well as his friend-Chandrakant Gaikwad. Accused - Satpal Rupanvar and Santosh @ Lubbya Chandalkar and three unknown persons alighted from that bolero vehicle. They were armed with pistols. They fired bullets at Chandrakant Gaikwad (since deceased). Informant - Dada Jadhav by crossing his hotel and house, ran towards the river and when he turned back, he saw that accused-Satpal threw a stone on the head of deceased-Chandrakant and killed him. The accused persons chased informant -Dada Jadhav also but they could not find him. In this manner, according to the prosecution case, accused persons committed murder of Chandrakant Gaikwad and attempted to commit murder of informant -Dada Jadhav.

6 According to the prosecution case, earlier informant – Dada Jadhav had lodged reports, attributing the penal provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against Satpal Rupanvar and he also alleged that accused Satpal used to visit the hotel of informant -Dada Jadhav for dinner and on demanding the amount of bill, he used to ransack the hotel.

7 During investigation, the prosecution has recorded statement of several eye witnesses. Statements of eye witnesses as well that of the informant are consistent, stating that initially

bolero vehicle was driven to the persons of Chandrakant and Dada and thereafter, Chandrakant was murdered by firing bullets at him by accused persons. Eye witnesses identified accused persons including the present applicant.

8 Test identification parade was held by the Executive Magistrate on 16.3.2013. In that test identification parade which was conducted from 4.30 p.m. to 4.45 p.m., according to the prosecution case, eye witnesses namely - Aparna Jadhav, Champabai Jadhav, informant-Dada Jadhav and one Kishor Petkule have identified the present applicant/accused as one of the assailants of Chandrakant Gaikwad. The period of time required for this test identification parade is stated to be only 15 minutes but the validity of such test identification parade cannot be adjudicated at the pre-trial stage. Purpose of conducting the test identification parade is for assisting the investigation and in order to confirm whether the investigation is being conducted in correct direction. Evidence of test identification parade can never be considered as substantial evidence. Dock identification is the substantive evidence. Suffice it to mention here that eye witnesses have identified the present applicant as one of the assailants.

9 Be that as it may, it is seen that after this incident, on 15.02.2013 Police Inspector-Vasant Tambe has received a secrete information that one bolero vehicle is moving in

suspicious condition and, therefore, he attempted to intercept that vehicle. When Police Inspector-Vasant Tambe attempted to search that vehicle, the present applicant as well as co-accused fired at Vasant Tambe and subsequently, the police team was successful in arresting the present applicant as well as co-accused. Four pistols with other incriminating articles came to be seized from all of them. This is an additional evidence to connect the present applicant to the crime in question as, soon after the incident in question, they were found in the bolero jeep with fire arms.

10 Considering this nature of the evidence against the present applicant/accused, he is not entitled for parity with co-accused Nitin @ Shital Kharat, who is released on bail. No case for bail is made out by the present applicant/accused.

11 In the result, bail application is rejected.

(A. M. BADAR, J.)

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