

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

CRIMINAL BAIL APPLICATION NO. 667 OF 2016

Shri Abhimanyu @ Khandu Prakash Shinde ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. P. M. Arjunwadkar, Advocate for the Applicant.

Mr. S. S. Pednekar, A.P.P. for the Respondent- State.

CORAM : A. M. BADAR, J.

DATE : 01st JULY, 2016

P.C. :

1 Applicant/accused in Crime No. 200 of 2015 registered with Vadgaon Maval Police Station, Dist. Pune at the instance of informant-Sonu @ Yogesh Walunj, brother of the deceased, for the offences punishable under sections 302, 143, 147, 148, 149 r/w. 120(b) of the Indian Penal Code and under section 3(25), (27) of the Arms Act and Section 125 of the Bombay Police Act, by this application is praying for releasing him on bail.

2 Heard the learned counsel appearing for Applicant/accused at sufficient length. By taking me through the entire chargesheet, he argued that the role attributed to the present applicant is only that of surrounding the deceased alongwith

other co-accused. Learned counsel for the applicant/accused further argued that no weapon is attributed to the present applicant. It is not alleged that the present applicant supplied any weapon to the co-accused. By taking me through the statements of Ranjeet and Rajkumar, the learned counsel for the applicant argued that their version is hearsay. My attention is drawn to the certificate of cause of death and it is submitted that the deceased died due to gun shot injury. The weapon attributed to accused- Shekhar Shinde and the same is recovered at his instance by a search as per the provisions of section 27 of the Arms Act. It is further argued that in the informant has filed an affidavit, stating that he had named four persons inadvertently in the FIR and investigator had deleted their names from the array of the accused at the time of the filing of the chargesheet. It is further argued that only cloths are seized from the present applicant and no four wheeler vehicle is seized from him.

3 Learned APP opposed the application. Perused the chargesheet. It is the prosecution case that in the year 2009 over the issue of political supremacy in elections, there was a dispute between Walunj family and Shinde family. According to the prosecution case, Mangesh @ Banti Dnyaneshwar Walunj (since deceased) is the Taluka Head of Maharashtra Navnirman Sena Party and the other fraction in the village Kamshet is the head of Shinde family. According to the

prosecution case, election of Gram Panchayat at Kamshet was scheduled on 04.08.2015. Mangesh @ Banti Valunj alongwith his supporters visited several polling booths for supervising the performance of his group in the elections. When he was returning after his visit to the election booth at Nehru Vidyalaya, it is found that his vehicle was surrounded by other vehicles. His supporters then started removing other vehicles in order to make vehicle of the deceased free. It is averred that at that time, accused persons including Shekhar Shinde and the present applicant surrounded Mangesh @ Banti Walunj. Thereafter, Shekhar Shinde fired at Mangesh @ Banti Walunj from his pistol. At that time, co-accused Balu Shinde is also stated to be having pistol. Mangesh @ Banti was then immediately shifted to Pioneer Hospital, Somatane Phata, Tal. Maval, Pune by his supporters where he was declared dead. The investigator has also received opinion from B.J. Medical College and Sasoon Hospital, Pune to the effect that Mangesh Mangesh @ Banti Valunj died due to firearm injury.

4 The incident in question is stated to be witnessed by several supporters who accompanied deceased -Mangesh @ Banti at the time of the incident. Prima facie, they appear to be natural witnesses to the incident in question and as it was the day of election Mangesh @ Banti was heading one group in the village. Consistent statement / version of witnesses namely - Pradeep Dattatray Bardade, Kolhya @ Ravinda Ashok Jadhav,

Kiran @ Surya Maruti Hagvane, Vinod Suresh Gaikwad, Randhir @ Gangya Budhaji Yadav, Mangesh Maruti Rane, Hiranman Mahadev Kedari, Mahesh Namdav Malpote, Ritesh Raghunat Walunj, Vijay Suresh Gaikwad and others goes to show that since beginning the group of persons with Shekhar Shinde including the present applicant were behind deceased-Mangesh @ Banti. Thereafter, they surrounded Mangesh @ Banti by obstructing his vehicle. After following deceased-Mangesh @ Banti, he was done to death by firing gun shots at him. Evidence collected by the prosecution, prima facie, reflects that by forming unlawful assembly, the members thereof including the present applicant indulged in rioting and murdering Mangesh @ Banti Walunj. Prima facie, it is, therefore, seen that each of their member is liable for criminal act done by the other members of the unlawful assembly. In the case in hand, the applicant is stated to be one of the members, who surrounded the deceased in order to prevent him from proceeding in any direction. Affidavit filed by the informant during the course of investigation is of no consequence as there are several witnesses who named the present applicant to be the member of the unlawful assembly. In this matter, as the offence punishable is death or life imprisonment, no case for bail is made out.

5 In the result, the bail application is rejected.

(A. M. BADAR, J.)