

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1194 OF 2016

Mukesh @ Mukanda Hiranman Shinde

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Sudeep Pasbola i/b Mr. Rahul Arote Advocate for Applicant.

Mr. Y. M. Nakhwa APP for the State.

Mr. R. M. Khedekar, A.P.I. Kamshet Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 17, 2016.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 08/08/2015 in crime no. 200 of 2015 registered at Vadgaon Mawal Police Station for offence punishable under section 302, 120 (B), 143, 147, 148, 149 of the Indian Penal Code and section 3 r/w 25 & 27 of the Indian Arms Act.

2) It is the case of the prosecution that one Mangesh @ Bunty Dnyaneshwar Walunj was prosecuted for offence punishable under section 302 of the Indian Penal Code for having committed homicidal death of one

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Bharat Shinde. Hence, both families were on logger heads. It appears that Mangesh was acquitted of the said offence in the year 2015. On 04/08/2015, election to Grampanchayat Kamshet was held. People had gathered at the polling centre. Mangesh along with his associates was visiting all the polling booths.

3) On 04/08/2015 itself, Sonu @ Yogesh Dnyaneshwar Walunj brother of Mangesh lodged a report at the police station that on 04/08/2015, at about 11.00 a.m., he along with his brothers and other associates had reached the polling booth. They were standing at the parking place. When Mangesh was about to board the car about 12.00 noon, he was suddenly surrounded by Shekhar Shinde, Raju Shinde, Ram Mane, Dhanesh @ chocolate Dilip Shinde, Abhimanyu Shinde, Balu Shinde and Sreenath Vithal Shinde. At that time. Shekhar Shinde was armed with a revolver, similarly Balu Shinde was also armed with revolver. That Shekhar had fired at Mangesh. When Mangesh was in the process of rescuing himself, accused had followed him and once again shot at him. He was declared dead when he was taken to the hospital. It is a matter of record that name of the present applicant is not reflected in the F.I.R.

4) On the same day, in the evening, supplementary statement of first informant was recorded in which he alleged that at the time of the incident, present applicant along with some others were present at the scene of offence. On this basis, applicant was arrested on 08/08/2015. It is pertinent to note that first informant had filed an affidavit on 11/09/2015, which was registered before Executive Magistrate/Tahsildar Vadgaon-Mawal wherein he had specifically stated that he had named accused Rajaram Shinde, Dnyaneshwar @ Balkrishna Jijaba Shinde (Mauli), Rohidas Shinde and Shankar Shinde by mistake and had therefore, exonerated them. His supplementary statement was recorded on 12/09/2015 wherein he had reiterated that he had named the said accused by mistake.

5) This Court cannot be oblivious of the fact that first informant happens to be real brother of the deceased.

6) The learned counsel for the applicant submits that there is no specific overt act attributed to the present applicant. As far as presence of the accused at the scene of offence is concerned, it cannot be said to be an incriminating circumstance for the simple reason that it was a polling day and applicant happens to be the voter in the electoral roll of village Kamshet and that his

presence was natural.

7) The learned APP is assisted by Advocate Shri. Prashant Patil representing the complainant. It is submitted on behalf of the prosecution that present applicant happens to be a close relative of Shekhar Shinde and therefore, it should be inferred that the applicant had the knowledge that Shekhar Shinde in all probabilities is likely to eliminate Mangesh on that day. Such a far fetched inference cannot be drawn.

8) The learned APP submits that this Court has rejected the application of accused Abhimanyu Shinde by an order dated 01/07/2016 and therefore, applicant also does not deserve to be enlarged on bail.

9) It is true that in the order dated 01/07/2016, it is observed that applicant therein had surrounded the accused. Today, this Court has perused the statements of the witnesses. They have categorically disclosed to the police on the very next day that when Mangesh, in the course of fleeing from the spot to rescue himself, Abhimanyu Shinde had chased the deceased. This act of chasing the deceased by itself would be sufficient to infer that Abhimanyu had shared common intention with the accused Shekhar Shinde. As far as present applicant is concerned, his presence at the polling booth is the only

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incriminating circumstance against him and hence, applicant deserves to be enlarged on bail.

10) It is made clear that the observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. The learned Sessions Court shall not be influenced by the observations made herein above and shall consider the substantive evidence which is recorded. It is also made clear that co-accused shall not claim parity with the present applicant.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall not reside in Mawal Taluka till the conclusion of the trial.
- (iv) Applicant shall report to Shivaji Nagar Police Station, Pune on every Sunday between 10.00 a.m. to 12.00 noon. Applicant shall maintain a diary of his presence at the police station and shall continue to report to the police

station till the framing of charge.

(v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)