

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1218 OF 2016

Dattatray Raju Shelke

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Pandit Kasar Advocate for Applicant.

Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 20, 2016.

PC :

1) Heard. This is an application under Section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 27/07/2015 in crime no. 66 of 2015 registered at Khadak Police Station. Investigation was set in motion and the Applicant has been charge-sheeted for offence punishable under sections 120 (B), 307, 143, 144, 147, 148, 149 of the Indian Penal Code, and under Section 3/25 (1-B), 5/27 (1), 4/25 of the Indian Arms Act and under section 37 (1) (3)/135 of Bombay Police Act and Section 3(1)(ii), 3(2), 3(4) of MCOC Act.

2) It is the case of the prosecution that on 11/03/2015, one Ajay Shinde lodged a report at the police station, alleging therein that on 11/03/2015, he

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was in the company of his girlfriend namely Meghana. They were driving in the Scorpio jeep of the complainant. They had been to East Street Camp, Pune. They had visited S.B.I. Bank, however, there was a holiday to the bank and therefore, they had proceeded towards the house of Meghana i.e. Kasture chowk. He had parked his car in front of Himmatlal Jewellers. That suddenly he realized that the present applicant and others had rushed towards them with revolver in their hand. Yogesh was armed with revolver and others were armed with deadly weapons. They apprehended that they would be killed and therefore had rushed towards the house of Meghana. A bullet was shot and Meghana sustained injury on her stomach, just below her chest. She was rushed to the hospital. That there are eye witnesses to the incident. Fortunately, Meghana had recovered and was discharged from the hospital.

3) The learned counsel for the applicant submits that the applicant had no intention to kill Meghana. That in fact, they had shot at Ajay and accidentally Meghana had sustained injury. According to the learned counsel for the Applicant, offence would fall under section 326 of the Indian Penal Code or at the most section 304 of the Indian Penal Code.

4) What needs to be appreciated is the intention in the commission of the

act. It is clear from the records that the applicant and his associates wanted to eliminate Ajay and not Meghana since complainant belonged to the gang of the associates of the accused persons and subsequently had withdrawn himself. It is clear case of transfer of malice and the offence would fall under section 301 of the Indian Penal Code. Applicant is being prosecuted under the provisions of MCOCA also. Applicant has criminal antecedents.

5) Taking into consideration the nature of allegations and the evidence collected by the investigating agency, Applicant does not deserve to be enlarged on bail. Hence, application stands rejected.

(SMT. SADHANA S. JADHAV, J.)