

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

CRI. BAIL APPLICATION NO. 1240 OF 2016

Swapnil Sanjay Shinde

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Satyavrat Joshi, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 13th JULY, 2016

P.C. :

1 The applicant/accused in Crime No. 690 of 2015 for the offences punishable under sections 302 and 120-B of the Indian Penal Code and under section 4(25) of the Arms Act, registered with Chakan Police Station, Pune Rural, 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 the incident in question happened on 18th December, 2015. The FIR shows that apart from known accused persons, two unknown accused persons were also there at the time of incident. The name of the present applicant/accused is not mentioned in the FIR.

Learned counsel further argued that the applicant came to be arrested on 01st January, 2016 and only evidence against him is that of recovery under section 27 of the Evidence Act. Though iron rod as alleged to have recovered at the instance of the applicant, the deceased had not suffered any injury which may be attributable to the rod. Blood stained cloths are also sated to have been recovered but there is no forensic evidence to connect the applicant/accused to the crime in question. The applicant is also not identified by the witnesses.

3 I have also heard the learned APP for the State. He argued that apart from evidence of recovery, the prosecution has collected evidence to show that immediately after the incident, the applicant/ accused went to Goa and stayed their alongwith co-accused.

4 Perused the chargesheet. The FIR lodged by Amol Londhe goes to show that he was pillion rider of bullet motorcycle driven by-Harshal Borhade (since deceased) on 18th December, 2015. The FIR shows that the incident happened near water tank at village Mhalunge. As disclosed by the informant, a white colour WagnoR Car came from behind and it dashed the motorcycle driven by Harshal Borhade. Thereafter, Dhanesh @ Dam Temkar and Amid Shaikh and two unknown persons alighted from the Waganor vehicle. In FIR a sword is attributed to Dhanesh Temkar and Koyta is

attributed to Amid Shaikh. No specific weapon is attributed to the rest of the two accused persons.

5 Informant-Amol reported that four persons started assaulting Hashal Borhade and therefore, he ran away and informed the incident to one Sani Walke. Postmortem report shows that Harshal Borhade died homicidal death. Several incised wounds were found on his dead body.

6 On 5th January, 2016 confessional statement of the present applicant came to be recorded which is alleged to have resulted in recovery of the bloodstained iron rod from open place. Subsequent confessional statement dated 7th January, 2016 is stated to have resulted in recovery of bloodstained jean pant and shirt from the house shown by the present applicant.

7 In test identification parade the witnesses have not identified the present applicant. Postmortem report does not show any injury which can be attributable to the iron rod, recovered from the open place. Recovery of bloodstained cloths is on 7th January, 2016. The applicant/accused is arrested on 01st January, 2016. The incident of murder of Harshal Borhade had occurred on 18th December, 2015.

8 It needs to be mentioned here that after commission of serious offence, normally conduct of an accused is to destroy the evidence as early as possible rather than keeping it in his house itself.

9 So far as the visit of the present applicant to hotel in Goa is concerned, the register at Kadamba Tourist Home shows that the persons named Swapnil Shinde visited that hotel with four other persons from 19th December, 2015 to 20th December, 2015. Who were four other persons is the question which remained unanswered in the chargesheet. Those four persons or co-accused are not subjected to identification parade by inmates of employees Kadamba Tourist Home.

10 Considering the nature of the evidence against the present applicant his pre-trial detention as such is not warranted and therefore, the following order :

ORDER

- i. The application is allowed.
- ii. The applicant/accused in Crime No. 690 of 2015 for the offences punishable under sections 302 and 120-B of the Indian Penal Code and under section 4(25) of the Arms Act, registered with Chakan

Police Station, Pune Rural, Dist. Pune, be released on bail on executing PR Bond in the sum of Rs. 25,000/- and on furnishing solvent surety in the like amount.

- iii. As a condition of this order, the Applicant should co-operate with trial court in expeditious disposal of the trial.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.
- v. The applicant should not commit any offence of similar nature in future.
- vi. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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