

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

BAIL APPLICATION NO.269 OF 2017

Pravin Mukund Shinde

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Sonu Sharma for the Applicant

Mr.S.S.Hulke, APP, for Respondent – State

Mr.Shrikant Patil, PSI, Swargate Police Station, Pune – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 10, 2017

P.C. :

1. This application is moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under sections 302, 307, 201 r/w 34 of the Indian Penal Code in C.R. No.56 of 2015 of Swargate Police Station, Pune. The offence is registered at the instance of one Dashrath Laxman Kakade.
2. The incident of assault took place on 08/03/2015 near Dias Plot, Gultekadi, Pune. The complainant and his maternal brother Kishor Ravindra Gaikwad, at around 05.00 p.m., were having liquor at irrigation building near a canal. At that time, co-accused Pravin Shinde, Mohammad Pitale and the applicant/accused were also having liquor. At around 6.30 p.m., when the complainant and

the deceased Kishor Gaikwad started going to their houses, they found that these three persons were fighting amongst themselves. Kishor Gaikwad knew them and, therefore, he intervened and tried to settle their quarrel. At that time, co-accused Mohammad Pitale got angry and he called his brother Bablu Pitale. Within 5 to 7 minutes, the co-accused Bablu Pitale arrived there in a swift car. At that time, Mohammad Pitale, Pravind Shinde, the applicant/accused and co-accused Bablu Pitale started abusing and assaulting the complainant and deceased Kishor Gaikwad with kicks and fist blows and stones. The complainant was scared and so, he ran away and went to his other associates. When they all returned to the spot, they all found that all the four assailants were standing near the canal. As they saw complainant and his associates, they went in the car. Thereafter, they tried to find out Kishor Gaikwad. They did not get him and on the next day, dead body of Kishor Gaikwad was found in the canal. Thereafter, complainant Dashrath Kakade approached police and initially offence u/s 307 of the Indian Penal Code was registered. However, as dead body of Kishor Gaikwad was found, section 302 of Indian Penal Code was applied. The applicant/accused was arrested on the same day i.e. 9/3/2015. Hence this bail application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent and he has not committed any offence. He submitted that the applicant/accused seeks bail on the ground of parity as Bablu Pitale, who has played a higher role, was released on bail by the order of this Court dated 23/09/2016. He further submitted that the applicant/accused is in the prison since last two years. He argued that he does not have criminal record and his age was 19 years, when the offence was committed and the trial is not likely to commence in near future. So, he be released on bail.

4. The learned prosecutor has opposed the application. He submitted that the role of the applicant/accused is very specifically stated by the witness Sandeep Kakade. He was identified in Test Identification Parade, which was conducted on 24/04/2015. He further submitted that father of the applicant/accused has produced a forged birth certificate in the Court of J.M.F.C. at the time of remand to get the applicant/accused out of the jail and the learned Magistrate had acted upon it and had sent the applicant/accused to remand home. However, it was revealed that he is not a juvenile and, therefore, he was sent to the jail. The

learned prosecutor further submitted that this is a case of murder and the applicant/accused should not be released on bail.

5. Considered submissions of the counsel. Perused the FIR, the statement of the Dashrath Kakade, who is an eyewitness, so also statement of other eyewitness Sandeep Kakade and other documents. In the test identification parade, Sandeep has identified the applicant/accused. Though the name of the applicant/accused is mentioned in the FIR, as the informant Dashrath knew him; it is *prima facie* doubtful whether the applicant/accused had *mens rea* to kill the deceased.

6. As per the prosecution case, it was not a premeditated crime and there was a sudden quarrel, which ended in murder. The deceased was assaulted with kicks, blows and stones which were lying there. On query, it is mentioned by the prosecution that no criminal case is pending against the applicant/accused. In view of all these facts, the circumstances and submissions and also considering that the co-accused Bablu Pitale and Tushar are released on bail, I grant bail to the applicant/accused on the following terms:

ORDER

- (i) Application is allowed.
- (ii) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.
- (iii) The applicant/accused shall not enter in the Pune City except attending the Court dates.
- (iv) The applicant/accused shall cooperate with the Investigating Officer and attend the concerned police station as and when called.
- (v) The applicant/accused shall not tamper with the evidence or pressurize the complainant.
- (vi) The applicant/accused shall not commit any other offence especially offence against the human body.

7. The bail application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)