

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 270 OF 2017

- | | |
|---------------------------------|----------------|
| 1. Anil @ Balraj Diwanji Mallav | |
| 2. Mahesh Shivaji Mallav | ... Applicants |
| Vs. | |
| The State of Maharashtra | ... Respondent |

Mr. S.V. Kotwal, Advocate i/b. Mr. Ganesh Bhujbal for the Applicants.
Mr. Deepak Thakery, APP for Respondent – State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **2nd February, 2017.**

P.C.:

This Application is moved for bail by the applicants/accused, as they are facing charges under sections 427, 436, 452, 143, 146, 147, 148 and 149 of the Indian Penal Code in C.R. No. 519/2016 registered with Shirur Police Station on 31st August, 2016 at the instance of Santosh Ganpatrao Auti, Police Naik attached with Shirur Police Station

2. It is the case of the prosecution that on 28th August, 2016 on the day of Dahi Handi festival a corporator Mahendra Hiranman Mallav, who is relative of applicants/accused, was murdered in the afternoon and thereafter at around 3 p.m., the applicants/accused along with co-accused went in four houses of suspected assailants of Mahendra Mallav. They ransacked the house and destroyed the furnitures and other articles in four houses and also shop in that area. Two days thereafter the offence was

registered by the police. During investigation, the police recorded statements of some witnesses, who happened to be the owners of the houses or shop and they disclosed the names of applicants/accused and co-accused, who entered their respective house and destroyed the furnitures and articles. Both the applicants/accused were arrested on 9th September, 2016. Hence, this Bail Application.

3. The learned counsel for the applicants/accused has submitted that the applicants/accused along with co-accused have presented Bail Application No. 4387 of 2016 before the learned Additional Sessions Judge, Pune, however, while allowing the Application of the co-accused, the learned Judge has rejected the Application of these two applicants/accused by order dated 6th January, 2017. The learned counsel submitted that the role attributed to the applicants/accused is equal to the role attributed to the co-accused, who were granted bail. He pointed out that in the statement of one Mrs. Sunita Kale, she has stated that the applicants/accused along with other accused and nearly 40 to 50 persons entered her house and applicant/accused Mahesh Mallav assaulted her with hand. He submitted that the incident of ransacking the house and shop has taken place only after the murder of Mahendra Mallav. The applicants/accused have no criminal record. The learned counsel prays for bail on parity.

4. The learned APP, on instructions from Investigating officer, confirms that the applicants/accused have no criminal record prior to the incident. He submitted that the witnesses have given the names of the applicants/accused that they have entered the house and destroyed the articles.

5. Perused the FIR, statements of the witnesses, order passed by the Additional Sessions Judge, Pune and the statement of the witness Mrs. Sunita Kale. The witness Sunita Kale has stated that the applicant/accused Mahesh Mallav had assaulted her with hand. It appears that she was not severely injured. Though the names of the applicants/accused are appearing in the statements of eye-witnesses, it appears it was a mob of 40 to 50 persons who entered the house and destroyed the furnitures along with co-accused. The applicants-accused have no criminal record prior to the date of incident and they are inside the prison since 9th September, 2016. On perusal of the order granting bail to the co-accused, it appears that there is no difference in the role attributed to the co-accused and the applicants/accused. Hence, I am inclined to grant bail to the applicants/accused on the following terms and conditions:

ORDER

- (i) Application is allowed.
- (ii) The applicants/accused be enlarged on bail on furnishing P.R.

Bond in a sum of Rs.20,000/- each with one or two sureties in the like amount;

- (iii) The applicants shall not commit any criminal activity while on bail;
- (iv) The applicants shall not jump the bail;
- (v) The applicants shall attend all the Court dates;
- (vi) The applicants shall not pressurize or threaten the witnesses whose houses or shops were destroyed;
- (vii) The applicants shall not abscond or leave India without prior permission of the Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of their address;
- (viii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)