

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 396 OF 2017**

Salim Bhashir Bhilwade

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Satyavrat Joshi for the Applicant

Ms. Rutuja Ambekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 28th JUNE, 2017

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 128 of 2016 registered with the Miraj Rural Police Station, Sangli, for the alleged offences punishable under Sections 302, 324 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicant states that there is no material to connect the applicant with the alleged offence. He submits that although there is one eye-witness, Khijar Gulam Mushrif, the said eye-witness cannot be believed. He states that the applicant had no motive to cause the murder of the deceased-Sudhir @ Dipu. He further sought bail on the ground of parity. He submitted that co-accused Yasin Maner and Asif Kalyani have been enlarged on bail by the trial Court. He further assailed the Test Identification Parade held as well as the statements of the alleged three eye-witnesses to the incident.

4. Learned A.P.P opposed the application. He submitted that there is sufficient material to show the complicity of the applicant in the alleged offence. She submitted that there is no parity between co-accused Asif Kalyani and Yasin Maner, who have been enlarged on bail by the trial Court and the applicant.

5. Perused the papers. The incident has taken place on 29th April, 2016 at around 8:30 p.m and the FIR has been lodged on 30th April, 2016

by Vishal Kamble i.e. the brother of the deceased-Sudhir @ Dipu. The deceased-Sudhir @ Dipu succumbed to his injuries on 4th May, 2016 and the applicant was arrested in connection with the said offence on 4th May, 2016. The FIR has been lodged as against the unknown persons, by Vishal Kamble, the brother of the deceased. He has stated that when he was proceeding with his brother-Sudhir @ Dipu on a motorcycle, two persons came on a motorcycle and pushed them, as a result of which, they fell down from the motorcycle. He has stated that three more persons came in an auto rickshaw and that the said persons were armed with swords and stumps and that the said persons started assaulting Sudhir @ Dipu. He has stated that as his brother-Sudhir @ Dipu was assaulted and had received injuries, he was taken to the hospital. It appears that the deceased-Sudhir @ Dipu had made an oral dying declaration to his mother and other relatives, wherein he has disclosed the name of the applicant, as being one of the assailants. Learned Counsel for the applicant vehemently disputes the said oral dying declaration, as according to him, there is a recording by Dr. Monali Patil that “the patient is conscious oriented but not in a condition to give a valid statement”.

6. Be that as it may, the fact remains that there is an oral dying declaration. Whether or not, the deceased was in a position to make a statement, is a matter which will be decided by the trial Court. Apart from the said evidence, there is an eye-witness Khijar Mushrif, who has specifically named the applicant as being one of the assailants. He has stated that the present applicant had disclosed to him, that in the Ambedkar Jayanti Procession, Dr. Kamble's brother-Mayur Kamble was assaulted by Bhiku Kamble and hence, they wanted to take revenge of the said assault. The statement of Popat Kamble also shows that the applicant was one of the conspirators, who was present when the conspiracy was hatched with Dr. Kamble. There is another witness, Sachin Gore, who is a witness to the conspiracy hatched. The said witness has identified the applicant in the identification parade. Similarly, Hussein Shaikh is also a witness to the conspiracy. He has specifically named the applicant as being present at the time of the conspiracy.

7. *Prima facie*, considering the material *qua* the applicant, this is not a fit case to grant bail to the applicant. The application is accordingly

rejected.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.