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

BAIL APPLICATION NO. 490 OF 2017

Dhanesh @ Chocolate Dilip Shinde ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 774 OF 2017**

Balu Shantaram Shinde ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Sudeep Pasbola i/b Bhavesh Thakur for Applicant in BA No.490/2017.
Mr. Rajeev Patil, Senior Counsel with Sanchita S. Thakur for Applicant in
BA No.774/2017.
Mr. S.R. Agarkar, APP for the Respondent/State.
Mr. S.H. Nimbalkar, for Intervener.

**CORAM : A.S.GADKARI, J.
DATE : 31st OCTOBER, 2017**

P.C.:

1] These applications under Section 439 of Cr. P.C. are for bail in
CR No. 200 of 2015 dated 4.8.2015 registered with Vadgaon Maval Police
Station, District Pune under Sections 302, 120(B), 143, 147, 148, 149 of

the Indian Penal Code and under Section 3 and 25 of Arms Act.

Applicant/Dhanesh @ Chocolate Dilip Shinde is accused No.2 and Applicant/Balu Shantaram Shinde is accused No.10 in the present crime.

2] Heard Shri Pasbola the learned Counsel for the applicant/Dhanesh Shinde, Shri Patil learned Senior Counsel for applicant/Balu Shantaram Shinde, learned APP and learned Counsel for the Intervener. Perused the chargesheet.

3] It is the prosecution case that, deceased Mangesh @ Bunty Dyaneshwar Walunj was an accused in an offence punishable under Section 302 of Indian Penal Code for having committed murder of one Bharat Shinde. The record indicates that deceased Mangesh Walunj was acquitted from the said offence in the year 2015. That both families namely the family of Bharat Shinde and family of deceased Mangesh Walunj were on logger-heads. That when the election of Gram Panchyat of village Kamshet was scheduled on 4.8.2015, both the families formed their respective panels to contest the elections. It is the prosecution case that, on the date of election of the said Gram Panchayat i.e. on 4.8.2015 at about 12.00 noon deceased Mangesh Walunj along with his supporters had been to Pandit

Nehru Vidyalay Polling booth and thereafter went to Pastakia Plaza. That at the said Pastakia Plaza, accused No.1 Shekhar Shinde along with other accused persons encircled Mangesh Walunj and accused No.1-Shekhar Shinde fired at deceased Mangesh from a country-made fire-arm. Mangesh Walunj succumbed to injury prior to admission to the hospital and was declared brought dead. The first information report is lodged by the younger brother of deceased Mangesh Walunj namely Sonu @ Yogesh Dyaneshwar Walunj immediately on 4.8.2015. It is the further prosecution case that, the applicant- Dhanesh @ Chocolate Dilip Shinde along with other accused person was possessing chilly powder with him and the applicant/Balu Shinde was holding a fire-arm and pointed it at to deceased Mangesh Walunj when accused No.1-Shekhar Shinde fired at deceased. During the course of investigation the applicants/Dhanesh @ Chocolate Dilip Shinde and applicant/Balu S. Shinde came to be arrested on 5.8.2015 and 4.8.2015 respectively. During the course of investigation, the police have recorded statements of various eye-witnesses who prima facie have corroborated the version of the first informant/ Sonu @ Yogesh Dyaneshwar Walunj (brother of deceased Mangesh Walunj).

4] The record prima facie indicates that, the allegation of

prosecution that applicant/Balu Shinde was holding fire-arm and pointed it at to Mangesh Walunj (deceased) when accused No.1-Shekhar Shinde fired round from his fire-arm at deceased is not corroborated by any other piece of evidence, inter alia, the record is silent about recovery of the alleged weapon at the instance of applicant/Balu Shinde otherwise. As stated earlier, prima facie it appears that the said version of witnesses remains uncorroborated as of today.

As far as the applicant/Dhanesh @ Chocolate Dilip Shinde is concerned, it is the allegation of the prosecution that, on the date of arrest i.e. on 5.8.2015 he was found in possession of chilly powder. However, the medical record annexed to the chargesheet is silent about the use of chilly powder at the time of commission of alleged offence.

5] After taking into consideration the material available on record, prima facie, it appears that the only allegation which remains in fray is that, the applicants were the members of unlawful assembly at the time of encircling deceased Mangesh Walunj alongwith prime accused Shekhar Shinde and other accused persons. It further clearly appears from the record that by an Order dated 17.10.2016 passed by this Court in the bail application No.1194 of 2016 accused namely Mukesh @ Mukanda Hiranman

Shinde and by an Order dated 3rd February 2017 in Bail Application Nos.2322 of 2016 with 2390/2016 co-accused Akshay S. Shinde and Rushinath V. Shinde are released on bail.

6] As noted earlier, after perusing the entire record it prima facie appears that the applicants were the members of unlawful assembly at the time of commission of the said offence and apart from it there is no other material available on record as of today. It is also submitted that there are no antecedents at the discredit of both the applicants. It is the submission of the learned Counsel for the Intervener that if the applicants are released on bail, there is strong suspicion that they may administer threats to the prosecution witnesses and may tamper with the evidence. The said apprehension can be taken care of by imposing conditions upon the applicants.

7] In view thereof, both the applicants can be released on bail on following conditions.

Hence, the following Order:

(i) The applicants be released on bail in CR No. 200 of 2015 registered with Vadgaon Maval Police Station, District Pune, on their furnishing PR bond of Rs.50,000/- each with one or two separate

solvent sureties in the like amount.

(ii) Both applicants shall not enter the jurisdiction of Superintendent of Police, Pune rural till the conclusion of trial.

(iii) The applicants shall inform their latest place of residence and mobile contact numbers before their release from jail to the concerned Police Station.

(iv) After their release from the jail, the applicants shall attend the concerned Police Station where they propose to reside on every 1st Monday of the month between 10.00 a.m. to 12.00 noon.

(v) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail and in such case, the prosecuting agency is at liberty to file application for cancellation of bail.

(vi) Applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

8] Applications are allowed in the aforesaid terms.

(A.S.GADKARI, J.)