

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.875 OF 2017

Jivan Devram Shirsat

Applicant

versus

State of Maharashtra

Respondent

Mr.Rupesh Rajole for Applicant.

Mr.Ajay Patil, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 18th July 2017

PC :

1. This is an application for bail in connection with CR No.556 of 2014 registered with Mahatma Phule Chowk Police Station, Kalyan for offences punishable under Sections 307, 34 read with Section 34 of Indian Penal Code as well as Sections 3 and 25(1)(a) of Arms Act and Sections 37(1) and 135 of Maharashtra Police Act. The first information report was registered on 7th June 2015.

2. The prosecution case is that on 7th June 2015, at about 3.25 p.m., the informant was proceeding in his car from his residence to his cloth shop at Ambarnath. At around 3.45 p.m., the informant received phone call from Applicant-accused Jivan Shirsat that he should meet him at Vallipir Chowk near S.Kumar Jewellery Shop as he has some work with him. The complainant went to the said place. The Applicant-accused arrived in a car. The accused no.1 (Applicant) and his two companions got down from the vehicle. They approached the complainant. The Applicant fired at the head of the

informant by fire arm due to which injured sustained grievous injury above his right eye. The persons accompanying the Applicant-accused were also shouting that the informant should be punished. Thereafter the informant was taken to hospital. The statement of the informant was recorded by Police in hospital which was treated as FIR on 7th June 2016. The Applicant and the other accused were subsequently arrested by Police.

3. Learned advocate for Applicant submitted that the Applicant has been falsely implicated in this case. The Applicant is in custody since last two years. The investigation is complete and charge sheet has been filed. It is submitted that the informant was injured and was certainly not in a position to make any statement. Therefore, the FIR registered at his instance cannot be believed. It is submitted that first informant had filed a writ petition in this Court seeking transfer of investigation. It is stated that in the said writ petition, the informant has contended that he was not in conscious state of mind and does not understand as to how supplementary statement was recorded by police. Learned counsel therefore submitted that supplementary statement which implicates the Applicant, cannot be accepted. It is further submitted that there are various other circumstances and infirmities in the evidence which shows that the applicant has been falsely implicated. He submitted that the complainant's case is that main person who is involved namely Yunus has not been implicated as accused by the investigating agency. It is submitted that police had deliberately not recovered the footage from CCTV camera which was being installed near the place of incident. It is further submitted that there are several cases against the informant and his version cannot be accepted. It is submitted

that the statements of the witnesses are contradictory to each other and, therefore, on the basis of such evidence, the Applicant cannot be continued in custody. It is submitted that there is thumb impression on the statement of complainant which was treaded as FIR, however, the supplementary statement has been signed by him. It is, therefore, submitted that the case has been concocted against the Applicant due to enmity of the Applicant with the said complainant.

4. Learned APP opposed the prayer of Applicant. He submitted that there is direct evidence against the Applicant as he is the person who has fired with revolver towards first informant. It is submitted that the FIR was recorded on the basis of statement of the complainant, which bears the endorsement of doctor stating that the informant is responding to verbal comments, speech comprehensible and able to speak and statement can be recorded. It is further submitted that there is recovery of revolver at the instance of Applicant from his residential premises. It is, therefore, submitted that the application may be rejected.

5. I have perused the FIR and other documents on record. It is apparent that the complainant has categorically attributed the role to the Applicant as the person who fired at him by a revolver. There is recovery of revolver at the instance of Applicant. The points raised by learned counsel for Applicant with regards to infirmities as alleged, can be agitated during trial. This is not the stage to assess the said arguments. In the light of the fact that first informant has named the Applicant as the person who shot at him, it can be said that there is direct evidence involving the Applicant in the said crime.

6. However, taking into consideration the fact that Applicant is in custody since the date of arrest, trial can be expedited. I, therefore, pass following order :

ORDER

- (i) Bail Application No.875 of 2017 is rejected;
- (ii) Trial pending before the Court of Sessions, at Kalyan, in Sessions Case No.320 of 2015 is expedited;
- (iii) The Trial Court is directed to conclude the trial within a period of nine months from the date of receipt of copy of this order.

(PRAKASH D. NAIK, J.)

MST