

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

CRIMINAL BAIL APPLICATION NO. 956 OF 2017

Nityanand @ Nitu Ganpat Yadav	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr.Amin Solkar i/b. Mr.Tapan Thatte, Advocate for the Applicant.
Mr.M.G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 28, 2017.

P.C. :

This is an application for bail in connection with C.R. No.453 of 2015, registered with Wadala TT Police Station, for the offence punishable under Section 302 of IPC. FIR was registered at the instance of Abhilesh Bhadula on 11th September, 2015.

2 It is the prosecution case that there was a rivalry between the applicant and the deceased and at the instance of the applicant the deceased was murdered. It is alleged that on 10th February, 2015, the informant went to meet Arjun @ Munna Jaiswal, Dinesh @ Sunny Chavan was also present. While the informant was passing from MHADA Transit Camp, Dinesh @

Sunny came behind them and by revolver shot at Munna Jaiswal. Munna was taken to the hospital where he was declared dead. Offence was registered under Sections 302 and 120B of IPC. The prosecution relied upon the statement of Milind More which implicates the applicant. As per the statement of Milind More, which was recorded on 7th September, 2015, the applicant and accused no.1 were frequently meeting each other. It is further stated that the applicant accused was asking the accused no.1 as to whether he will do work of Munna Jaiswal. From the conversation which was going on between both of them, the witness realized that the applicant had planned to liquidate the deceased. Thereafter, the deceased was killed. The applicant had preferred an application for bail before the Sessions Court which was rejected. Thereafter, he had preferred an application before this Court viz. Bail Application No.503 of 2016, which was allowed to be withdrawn on 17th November, 2016.

3 Learned advocate for the applicant submitted that although the earlier application was withdrawn, there is change in circumstances to prefer a fresh application. He submitted that the witness Milind More whose statement had been recoded by the investigating machinery and which has been used against the

applicant to implicate him in the said crime had preferred an application before the Commissioner of Police retracting his statement and seeking permission to take action against police for recording wrong statement. It is, therefore, submitted that this fact should be considered as the change in circumstance. It is submitted that except the statement of Milind More there is no evidence to involve the applicant in the said crime. He submitted that the statement of Milind More is vague and cannot be considered as a cogent evidence to show the involvement of the applicant. In any case, the applicant is being a conspirator and not assailant in the crime. It is submitted that he is in custody since 25th September, 2015 and, therefore, he may be released on bail.

4 Learned APP opposed the application for bail. He relied upon the statement of Milind More which. He submitted that the application preferred by the said witness cannot be taken into consideration at this stage and the submissions advanced by advocate for applicant *visa-vis* the said later would be the matter of evidence which can be tested during the course of trial. He further submitted that there was a rivalry between the applicant and the deceased which has resulted in the murder of

Munna Jaiswal. He relied upon the statement of one of the witness who speaks about the said rivalry. He further pointed out that there was recovery at the instance of accused no.1 of weapon i.e. revolver. The weapon is being kept in the premises belonging to the applicant. He pointed out the panchanama regarding the search of residential premises of the applicant wherein a document in the nature of agreement in respect to the premises from where the revolver was found was executed between the applicant and the landlord. Learned advocate for the applicant, however, submitted that the said agreement was executed long back and the premises were being handed over to the accused no.1 and he was occupying the same. It is, therefore, submitted that the applicant was not occupying the said premises at the time of the alleged incident. Learned APP further submitted that there are two cases registered against the applicant in which the applicant have been discharged, and, one case for the offence punishable under Section 324 of IPC is pending against the applicant.

5 I have perused the FIR and the documents annexed to the application. The statement of Milind More, which was recorded on 17th September, 2015, categorically involves the

applicant in the crime. The statement of Milind More has to be read in consonance with the fact that accused no.1 was concerned in committing the murder of the deceased. The nature of conversation between applicant and accused no.1 referred to by witness Milind More shows complicity of applicant in the said crime. It is also pertinent to note that the premises from which the revolver was recovered was owned by the applicant which is evident from the agreement which was recovered from his residence. The application preferred by witness Milind More before the Commissioner of Police cannot be considered at this stage. In the light of the aforesaid circumstances, I am of the opinion that the applicant is not entitled to be released on bail and the application needs to be rejected.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Bail Application is rejected;
- (ii) Considering the fact that the applicant is in custody since 25th September, 2015, trial is expedited.

(PRAKASH D. NAIK, J.)