

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****CRIMINAL BAIL APPLICATION NO. 1016 OF 2017****Vinayak Manohar Rajiwade****..... Applicant****VERSUS****The State of Maharashtra****..... Respondent****ALONGWITH****CRIMINAL APPLICATION NO. 606 OF 2017****IN****CRIMINAL BAIL APPLICATION NO. 1016 OF 2017****Sham Hemant Rasal****..... Applicant
(Org.Complainant)****IN THE MATTER BETWEEN****Vinayak Manohar Rajiwade****..... Applicant****VERSUS****The State of Maharashtra****..... Respondent**

Mr.Aniket U.Nikam, i/b. Mr.Aashish Satpute for the Applicant.

Mr.Shailesh Chavan, i/b. Mr.Ranjeet H. Patil for the Intervener.

Mr.S.H.Yadav, A.P.P. for the State.

CORAM : T.V.NALAWADE, J.**DATE : 10th AUGUST, 2017****P.C.**

The applicant is filed for bail in C.R.No.187 of 2015 registered in Lonavala Gramin Police Station, District Pune for offences punishable under sections, 302, 307, 120-B, 201, 34 of the Indian Penal Code and also section 4 read with section 27 of the Arms Act. Against the applicant, the charge-sheet is also filed in the said

crime for the aforesaid offences. Both the sides are heard.

2. The crime is registered on the basis of the report given by the cousin of the deceased Dattatraya Rasal. There is dispute between Dattatraya Rasal and the main accused Ashok Rajivade over the business of hoteling. Ashok Rajivade was owner of one hotel by name Lohgad Resort and there is allegation that he is doing illegal business of boating in the lake situated at the site of the hotel. Due to that there used to be quarrels between Dattatraya and Ashok. On many occasions Ashok had given threats to Dattatraya. Balu Rajivade, Manohar Rajivade and the present applicant are the associates of Ashok and the applicant is cousin of the Ashok. They used to remain with Ashok during quarrels. The enmity increased when Dattatraya prepared panel for election to Ambegaon Sindgaon Group Grampanchayat. Ashok presumed that this step was taken only against him. In the past there used to be unopposed election but due to panel form by Dattatraya, there was a election. Ashok had then visited the hotel of Dattatraya and had given threat to him. After the elections were over, Dattatraya started suspecting that the persons of Ashok were keeping watch on him and on some occasions he had noticed that some persons have following them. The relatives of Dattatraya had not given importance to this suspicious and apprehension of Dattatraya.

3. The incident in question took place on 6th December,2015. The first informant Shyam Rasal had no personal information about the incident but he

learnt about it from the injuries eye witness and others that when Dattatraya was returning after attending the marriage, on the way back he was intercepted and in the presence of Lahu Shelke, a friend of Dattatraya, assault was made on Dattatraya and he was finished. The names of the assailants were informed to Shyam and so he gave their names in the report dated 7th December,2015. The crime was registered at 3.45 hours.

4. The incident was witnessed not only by Lahu but also by other persons like Mohan Ghardale, Kisan Bidkar, Ramdas Shinde etc. Initially deceased Dattatraya was travelling with them in esteem car when they returning to home. But on the way, he alighted from the vehicle and he took the company of Lahu who was having motor cycle. These persons had noticed that when the motor cycle went ahead, associates of Ashok were proceeding towards the same direction in maruti car and on motor cycle and they appeared to be in a hurry. The aforesaid friends of Dattatraya had then increased the speed of esteem car but before they reached, the incident was almost over and the Dattatraya was lying on road. Lahu was present therein injured condition. They noticed that Ashok, Manohar, Balu, Bunt and some unknown persons were leaving the spot with weapons like choppers, rods etc. The statement of Lahu who was riding motor cycle was recorded on 8th December,2015 and supplementary statement also came to be recorded. In the first statement, Lahu specifically name present applicant by describing his role. It

was stated that the present applicant was holding iron rod. He also disclosed that when he was trying to escape to save his life, in the dark, he had again noticed a person looking like the present applicant in the dark. The papers of investigation include panchanama and PM report. The records shows as many as 42 visible injuries were found on the dead body. The injuries had caused chop fracture of vault. Most of the injuries were chopped injuries and death took place due to those injuries. The injuries were all over the body. Some injuries were abrasions and most of the injuries were incised and chopped injuries. The record shows that weapons like choppers and iron bar were used and the allegations against the present applicant are that he used iron bar. For some time the applicant was not available to the police even when his name was there in FIR. He came to be arrested on 13th September, 2016. This circumstance can be used against him. Further there is other allegation showing that he had motive being close relative of Ashok. The material is sufficient to make out a prima facie case for offences of conspiracy to commit murder of Dattatraya and murder. It was a cold blooded murder and Lahu was fortunate that he survived.

5. Learned counsel for the applicant submitted that in view of the nature of the disclosure made by Lahu, it can be said that he was not sure about the presence of the present applicant on the spot. Learned counsel submitted that in the first statement at one place and the supplementary statement Vinayak is described as a

person looking like the present applicant was seen by Lahu. Though at one place there is such description in the first statement there is clear mention of the name of the present applicant at the beginning of the statement showing that he was present on the spot with weapon like iron bar. It is a matter of appreciation for the trial court and only at that time the submissions made by the learned counsel can be considered. At this stage such defence cannot be considered as there are aforesaid other circumstances. This court holds that it is not a fit case to grant bail. In the result, the application stands rejected.

6. Application filed for intervention is allowed and is disposed of.

(T.V.NALAWADE, J.)