

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

CRIMINAL BAIL APPLICATION NO. 1128 OF 2017

Satyajit N. Gaikwad

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

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Mr.A.P. Mundargi, Senior Advocate a/w. Mr.Shriram Shirsat, Mr.Nilesh Dubey, Mr.Sameer Vispute, Mrp.Priyank Shukla i/b. M/s.Equa Juris, Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent – State.

Mr.T.M. Narankar, API Shivajinagar Police Station, Ambarnath (East), present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 1, 2017.

P.C. :

This is an application for bail in connection with CR. No.I-25 of 2017 registered with Shivajinagar Police Station for the offences punishable under Sections 302 and 201 read with Section 34 of IPC and under Sections 3 and 27 of the of the Arms Act as well as Sections 37(1) and 135 of the Maharashtra (Bombay) Police Act. However, subsequently charge Section 302 of IPC was deleted and it was altered to 304 (Part II) of the IPC. On completion of investigation, charge-sheet has been filed for the offences punishable under Section 304 (Part II) read with Section 34 of IPC.

2 The prosecution case is that on 31st January, 2017 to 1st February, 2017 the applicant's family was invited for naming ceremony in the house of Ashok Gaikwad. The first informant's son Pratik Gaikwad aged about 12 years had gone to attend the said ceremony. In the same night at about 2.00 a.m., the complainant was informed that something has happened to Pratik and he has been taken to hospital. He visited hospital and found that Pratik has sustained bullet injury to his chest. He was declared dead. He made inquiry about cause of death and who killed his son. He did not get any satisfactory reply. In the said function, Aadesh Gaikwad, Ashish Gaikwad, Satyjeet Gaikwad (applicant) and Kabir Gaikwad were present. It is the case of the prosecution that some one fired a bullet from the pistol, as a result of which the deceased Pratik Gaikwad was killed. The incident was recorded in the CCTV Footage. It is the prosecution case that the applicant and the co-accused were involved in the said crime. From the CCTV Footage it was revealed that the applicant was loading the revolver which was accidentally misfired and as a result of that the deceased boy sustained bullet injury and died. During the course of investigation, statements of witnesses namely Smt.Manu Gaikwad, Smt. Bharti Gaikwad and Smt.Namita Gaikwad were recorded. They stated that five CCTV

cameras were installed on the wall of Dinesh Gaikwad which were removed by some persons after the incident. Statement of Kundan Madhavi recorded on 2nd February, 2017 referred to the fact that he was engaged for plying D.J. Some persons were dancing. Satyajit Gaikwad came there along with his friends. Some one had fired in the air. At about 1.30 a.m. Satyajit Gaikwad started dancing with his friends. He fired one round in air. He was loading second round and while doing so there was accidental firing which resulted in injury to Pratik. The boy was taken to hospital. The police recorded Panchanama on 3rd February, 2017. It was relating to statement made by accused Adesh Gaikwad. He stated that the incident of firing is recorded in CCTV camera which was removed by him at the instance of Kabir and Ashish Gaikwad. At his instance DVR was recovered. The police viewed the same. In camera no.1 it was noticed that one person has fired in the air by pistol. He disclosed the name of said person as Navin Keshwani. He again fired in air and handed over pistol to Adesh Gaikwad. It is further noticed that Ashish Gaikwad lifted victim and running towards the car. The other camera footage was viewed in which applicant was seen with pistol and while loading the pistol there was firing.

3 The applicant was arrested on 2nd February, 2017. On completion of investigation, charge-sheet has been filed.

4 Learned advocate for the applicant submitted that taking the prosecution case as it is, the role that has been attributing to the applicant is that he was loading the revolver and accidentally the bullet was fired resulting into the death of the victim. He submitted that the victim is closely related to the deceased. There was no intention to commit the said offence and the unfortunate incident had occurred accidentally. He submitted that taking the charge of the prosecution as it is, the offence is alleged to have been committed under Section 304 (Part II) of IPC. The applicant has been in custody from 2nd February, 2017 and in view of the charge-sheet being filed, further detention is not necessary. There are no criminal antecedents against the applicant. Three co-accused are granted bail. The recording of CCTV camera shows that applicant was loading the pistol when there was misfiring. The camera does not show that deceased had sustained injury of bullet at that time. He is not involved in destroying evidence of CCTV camera.

5 Learned APP opposed the application. He submitted

that the offence is very serious. There was no reason for the accused to be in possession with the revolver which is unauthorized. It is submitted that the accused ought to have a knowledge that in case of firing, any person may sustain the injuries resulting in death. He, therefore, submitted that the case under Section 304 (Part II) is made out. He further submitted that during the course of investigation, the statement of witnesses were recorded. The witnesses who are under the influence of accused tried to hide the incident and gave evasive answers with regard to the CCTV cameras. They tried to state that the cameras are not in working condition. He further submitted that the accused tried to destroy the evidence by removing the CCTV cameras immediately after the incident. He submitted that a young boy aged about 12 years has succumbed to the injuries in this incident and the accused does not deserve any sympathy and he should suffer for the crime committed by him.

6 Perused the FIR and the other documents on record. The prosecution case is that from the CCTV footage which were recovered by the investigating machinery, it appears that the applicant-accused was the last person who was handling the revolver and was trying to load the same and at that point of time

the bullet was fired. Prosecution has filed charge-sheet for an offence punishable under Section 304 (Part II) of IPC. Although, there can be debate about the application of charge under Section 304 (Part II), without entering into the said controversy, it can be seen that the applicant was the person who was trying to load the revolver when the incident had taken place. The deceased is related to the applicant. The applicant has been in custody since February 2017 and the charge-sheet has been filed. There are no criminal antecedents against the applicant-accused. There is no evidence on record to show that the applicant is the person who had tried to destroy the evidence by removing the CCTV cameras. The person who had allegedly tried to destroy the evidence are arrested and released on bail by the trial Court. In the aforesaid circumstances, bail can be granted to the applicant.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail application No.1128 of 2017 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-25 of 2017 registered

with Shivaji Nagar Police Station, Ambarnath, District - Thane, on furnishing P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand) with one or more sureties in the like amount;

- (iii) The applicant is directed to report Shivaji Nagar Police Station, Ambarnath, District - Thane once in a fortnight on first Saturday between 11.00 a.m. to 1.00 p.m., till further orders;
- (iv) The applicant shall not tamper with the prosecution evidence;
- (v) Bail Application is disposed of accordingly.

(PRAKASH D. NAIK, J.)