

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1016 OF 2016

Jeetu Shankar Dhivar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. A. S. Rajadhyaksha Advocate for Applicant.

Ms. P. P. Shinde APP for the State.

Mr. Arun Pokharkar, PI, Aarey Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 14th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 04/06/2015 in crime no. 70 of 2015 registered at Aarey Police Station on 22/05/2015, initially offence was registered under section 307 r/w 34 of the Indian Penal Code and section 3 r/w 25 and 27 of the Indian Arms Act. The victim Raju Shinde had expired and hence, while filing the charge-sheet, section 302 of the Indian Penal Code was added.

2) It is the case of the prosecution that on 22/05/2015 one Shrikant Shinde @ Raju Shinde was present in front of Balaji Tele Films Company and Aarey Colony, Goregaon. At about 1.55 p.m., two persons had come and had fired three rounds from a distance at Raju Shinde. He has sustained bullet injuries on the right side of his stomach. It was in these circumstances that F.I.R. was lodged under section 307 r/w 34 of the Indian Penal Code.

3) On 02/07/2015, Raju Shinde succumbed to the said injuries and hence section 302 of the Indian Penal Code was added. The persons who had shot pistol at Raju were arrested. In the course of investigation, it had transpired that the applicant was found in the company of the principal accused. That on 26/05/2015, investigating agency had recorded the statement of one Rakesh Kamble who had disclosed that two months prior to the incident, he had seen the present applicant in the company of Ismail and Suresh Gaikwad.

4) The learned counsel for the applicant submits that there is no material on record to indicate that the applicant was in the company of the principal accused Suresh Gaikwad at any point of time in close proximity of the

incident. Applicant was also not in the company of Suresh Gaikwad on the date of incident.

5) The learned APP submits that there are call detail records to show that applicant was in touch with co-accused.

6) The learned counsel for the applicant submits that there is no material on record which could be converted into evidence against the applicant to indicate that he had conspired with Suresh Gaikwad to eliminate Raju Shinde. It is also submitted that in any case, the incident is of 22/05/2015 whereas Raju Shinde had expired on 02/07/2015. It is in these circumstances that the applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.

25,000/- with one or more local solvent sureties in the like amount.

- (iii) Applicant shall report to Aarey Police Station on every Sunday between 10.30 a.m. to 12.00 noon till framing of charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)