

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

BAIL APPLICATION NO.1747 OF 2016

Dhanesh @ Dam Murlidhar Temkar Applicant

versus

State of Maharashtra ... Respondent

Mr.A.P. Mundargi, Senior Advocate i/b. Sadanand M. Kamtam,
Advocate for the Applicant.

Mr.S.S. Pednekar, APP for the State/Respondent.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 20th FEBRUARY, 2017.**

P.C. :

1. This is application under section 439 of Cr.P.C. moved
bail by the applicant/accused. The applicant/accused is
prosecuted for the offences punishable under sections 302, 120-
B of the Indian Penal Code and 4 (25) of the Arms Act in
C.R.No.690/16 of Chakan Police Station, Pune.

2. It is the case of prosecution that one Amol Anil Londhe
was working as a driver with one Chhaya Walke. The deceased

Harshal Shamrao Borhade was also a driver. They were friends. They were working with the same employer. In the year 2011 a mob of 60-70 persons have killed one Santosh Walke and so also offence was registered at C.R.No.30/11 of Chakan Police Station, Pune, deceased Harshal Borhade, one Sandip Mahalungkar, the present applicant/accused and other persons. Deceased Harshal had initiated to pray for pardon and therefore Sandip Mahalungkar had questioned him and quarreled with him two months prior to the date of incident

3. On 18/12/2015 at around 05.30 p.m. the complainant Amol Londhe alongwith deceased Harshal was going to meet his mother alongwith Amol on motorcycle. When they came near Malundge, at that time, one white colour car dashed the motorcycle from the rear side. The deceased lost his control and Amol and Harshal both fell down. At that time, Amol noticed that one Abid Shaikh was driving the car. The applicant/accused who was occupying the seat next to the driver, got down and other two persons also got down and they all started assaulting

Harshal. Amol Londhe therefore ran away to report the incident to the relatives of Harshal. Harshal was severely injured. He succumbed to the injuries on the same day when he was shifted to the hospital. Thus on the same day i.e. 18/12/2015, offence was registered at C.R.No.690/15 with Chakan Police Station. Pursuant to the investigation applicant/accused was arrested on 09/01/2016. Hence this bail application.

4. The learned senior counsel for the applicant/accused has submitted that the applicant/accused is innocent. He has not committed any offence. He was not one of the assailants. He further submitted that there is variance in the statement of complainant Amol and the statements of other two eyewitnesses i.e. the Sharmila sister of deceased Harshal and Nanda, the mother of the deceased Harshal. He pointed out that these two ladies were present and claimed to be eyewitnesses. As per their statements one white colour Wagon R dashed the motorcycle of Harshal. Harshal and Amol fell down. Amol walked away towards one temple. Four persons who alighted from the car

were armed with weapon and all the four persons loudly told Harshal that why he was giving evidence against Sandip Mahalungkar and the present applicant/accused and therefore they wanted to eliminate him and they all assaulted him. So she went ahead and therefore both the ladies came to hold Harshal.

5. The learned senior counsel pointed out that both the ladies have identified Abid Shaikh and Mahesh Botre and did not identify other two persons. As per the prosecution case, there were four assailants. If two of them were identified by the eyewitnesses i.e. sister and mother of the deceased and as per their statements the assailants wanted to eliminate Harshal as he was to give evidence against Sandip Mahalungkar and the present applicant/accused Dhanesh; this negates the presence of applicant/accused at the spot of the offence. The learned counsel further pointed out that test identification parade was conducted on 03/02/2016, wherein the witnesses i.e. Chand Hasan Shaikh and Govind Jayram Ghate, who claimed to be also eyewitnesses to the incident, did not identify the applicant/

accused. The mother Nanda Borhade has identified the applicant/ accused. He submitted that as per the statement of Nanda and Sharmila, i.e. the mother and sister of deceased Harshal, these two ladies knew the applicant/accused and if they knew the applicant/accused, there was no need of test identification parade and moreover the name of the applicant/accused has not mentioned in the statement of Nanda and Sharmila. It prima facie does show that the applicant/ accused was present at the time of the assault.

6. The learned senior counsel further submitted that nothing was recovered from the present applicant/accused and thus he has to be granted bail. He further relied on the order passed by the order of this Court dated 13/07/2016, wherein the co-accused Swapnil was granted bail in B.A. No.1240/16 and by order dated 05/08/2016 Nikhil Botre was granted bail by this Court. He further submitted that apart from this, there are two cases pending against the applicant/accused. But one is under section 323 of IPC and another is under section 302 of IPC in

C.R.No.30/11, the evidence against the applicant/accused is not sufficient as it was an attack and murder by a mob of 60-70 persons. The learned senior counsel further submitted that he claims alibi that he was present at Manchar police station.

7. The learned prosecutor opposed bail application. The learned prosecutor relied on the complaint of Amol Londhe. In the statement of Nanda Borhade and Sharmila Borhade, they have not stated that they have ever seen the present applicant/accused though they knew him by name and therefore Nanda was put as an eyewitness to the identification parade. She had identified the applicant/accused. The learned prosecutor relied on the statement of other witnesses i.e. Ganpati Nagurao Kodamangal and so also Abhijit Amrale and so also Yuvraj Soni. The learned prosecutor submitted that from the statement of Yuvraj Soni one can gather that the applicant/accused and co-accused and other persons including Sandip has the conspiracy to eliminate Harshal. He further pointed out that the applicant/accused is arrested earlier in a

murder case in C.R.No.30/11 and though he was on bail, he has committed another offence of murder and therefore he should not be released on bail.

8. Perused the FIR. Perused statements of Sharmila Borhade and Nanda Borhade. It is true that there is variance in respect of giving names of assailants in the statement of complainant by two ladies. However, at this stage, the weightage is to be given to the statement of the complainant whose statement was recorded on the same day i.e. 18/12/2015 who claims to be an eyewitness. The statements of two ladies i.e. Nanda and Sharmila were recorded by police on 25/12/2015. In the statement of Amol, he has given details of the incident and has attributed a specific role to Dhanesh @ Dam i.e. the applicant/accused, who was assaulting Harshal with sword. He also told that other three persons also assaulted Harshal. P.M. Notes disclose that he had 21-22 incise wounds with four fractures of the skull. The statement of one Yuvraj Soni disclose that two days prior to the incident, the

applicant/accused and his group were discussing and at that time they talked about eliminating Harshal. Similarly, statement of Abhijit Amrale is also on the same line. Mother Nanda has identified the applicant/accused. Thus, considering the evidence of complainant and other circumstances, evidence of the other witnesses and also after taking into account the criminal antecedents against the applicant/accused, as pointed out by the learned prosecutor, I am not inclined to grant bail. Hence the application for bail stands rejected.

(MRIDULA BHATKAR, J.)