

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO.1757 OF 2016**

Aakash Kishan Bhalerao
Versus
The State of Maharashtra

...Applicant

...Respondents

.....

Mr.Ashok Mundargi Sr.Adv. A/w Mr.Satyavrat Joshi for the
Applicant
Mr.Prashant Jadhav APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th JUNE, 2017.

P.C.:-

1. This is bail application filed by the Applicant who is facing trial in a Sessions Case No.306 of 2014 pending on the file of the learned Additional Sessions Judge, Pune, District Pune.
2. Heard the learned Senior Counsel Shri.Mundargi for the Appellant. He has submitted that the Applicant herein is not involved in the said crime. He has further submitted that a perusal of the chargesheet would clearly indicate that the incident occurred at the spur of the moment. The incident as occurred does not make out an offence under Section 302 of the Indian Penal Code. He further submits that the Applicant is in custody since the year 2013 and considering the nature and the allegations levelled against him and

the role played by him, his presence is not required in the custody. He therefore, prays that the applicant be released on bail.

3. Learned APP has submitted that the statements of the four eye witnesses clearly indicate that the Applicant herein was involved in the said incident. He has submitted that considering the nature of the offence and also considering the fact that the eye witnesses are yet to be examined, the applicant is not entitled for bail.
4. I have perused the records and considered the submissions advanced by Senior learned Counsel and the learned APP for the State.
5. The records prima facie reveal that Santosh Vishwanath Kharabi, who is the owner of the Hotel Atharva Beer Bar and Permit Room had lodged the First Information Report dated 22/07/2013. He had stated that on 21/07/2013 at about 10.30 p.m. he had seen about four persons sitting in one of the rooms of the hotel. He had heard them talking loudly and also heard sound of breaking of glasses. He had gone to the said room and told them not to break glasses. He thereafter returned to the counter and sometime thereafter the manager told him that the said four persons had paid the bill.

6. The First Information Report prima facie reveals that one of the waiters Azhar Husain heard some sound towards the rear side of the hotel and had seen one person fallen near Hut No.2. On being informed the first informant went towards the said spot, he too saw the person lying near the hut. He told the other two persons, who were leaving the hut, to take alongwith them the other person. He went near the person, who had fallen near the hut and saw that he had sustained a bleeding injury on his chest. The said person was dead. He has stated that he had seen one empty cartridge fallen near the tree. He informed the police, the police came to the spot and based on the pancard details, identified the person as Nitin Laxhman Virnak. The CCTV footage of the hotel revealed that one of the persons who had worn a white shirt had fire arm, had shot at the said person from close range. The first informant had therefore, lodged the First Information report against the said person for committing murder of Nitin Laxhman Virnak. Pursuant to the First Information Report, crime No.249 of 2013 came to be registered under Section 302, r/w Section 34 of the Indian Penal Code and 3(1) 25 of Arms Act came to be registered.

7. The statement of Azar Husain, was working as a waiter at Atharva Hotel prima facie reveals that about four persons were having drink in one rooms of hotel Atharva. They were arguing amongst themselves and had also broken the glasses. He had informed Santosh Vishwantah Kharabi, the owner of the hotel about the said incident. The owner of the said hotel advised the said persons not to cause damage to the hotel property.
8. The statement of said Azhar Husain reveals that about 11.00 p.m. said persons came out of the room. They were arguing among themselves . Immediately, thereafter, he heard some sound and when he turned around he found that one of these four persons had fallen near the hut/room and the other three were leaving the place of the incident. He has further stated that he had informed Santosh Vishwanath Kharabi, the owner of the said hotel about the incident. Said Santosh, went to the spot of the incident had told the other three persons to take the person who was lying on the ground. . However, they did not take him and they left the spot by Scorpio bearing No.MH-14-CC-7542. This witness had also seen the CCTV footage and had said that one of the four persons had shot the said person by means of a fire arm.
9. Rajkumar Devchand Za and Santosh Kharabi have also prima

facie corroborated the statement of Azhar Hussain. The post mortem report prima facie reveals that death of said Nitin was caused due to fire arm injury. The nature of the injuries as described in the post mortem report prima facie reveals that said Nitin was shot from a very close range.

10. Statement of Somnath Dattatrya Jadhav API, Police Station, Talegaon Dabhade, also prima facie reveals that on 22/07/2013 at about 1.00 a.m while he was on patrolling duty, he had tried to stop a vehicle Scorpio bearing No.MH-14-CC-7542. He has stated that the Applicant herein was the driver of the said vehicle. He had conducted personal search of the Applicant and he had recovered one countrymade pistol from the possession of the applicant. He had also recovered blood stained shirt and one blue coloured jeans from the said vehicle. Somnath Jadhav, and Jyoti Bapu Patil, Mohansingh Hirasingh, Rajendra Baliram Salunke, Mahendra Dashrath Gaikwad, Pramod Dattatrya Ugale, Navnath Nivrutti Nannavere, Ramesh Ganpat Waghware, the other police personnel, who were on patrolling duty have also given similar statements.

11. The Record prima facie reveals that countrymade pistol as well as empty cartridge from the place of the incident was sent to Forensic

Laboratory at Kalina. Chemical Analysis report reveals that, the country made pistol which was recovered from the possession of the Applicant was in working condition. Residue of fired ammunition-nitrite was detected in the barrel washings. The report further states that the Pistol was used for firing before it was received in the laboratory. The report further reveals that the empty cartridge which was recovered from the place of the incident was fired from the said countrymade pistol.

12. The material on record also prima face reveals that the hard disk containing the CCTV footage was attached in panchanama. Video clip was prepared, by Shri. Rahul Pawar. He had stated that the said CCTV Footage revealed that one of the persons, who had worn white shirt and jeans had fired at the said person from a very close range.
13. The records further revealed that the applicant herein was identified in the identification parade held by Nayab Tahasildar, Manikraj Nimbalkar.
14. Thus, the material on record prima facie reveals that, the applicant had fired gun shot at the deceased Nitin from a very close range, and had thereby caused his death. Hence at this stage it cannot be said tat the applicant had no intention of causing death.

Said Nitin had sustained injuries on his chest.

15. The material on record prima facie shows the involvement of the applicant. The above facts and also considering the fact that the eye witnesses are not yet examined, in my considered view, the applicant is not entitled for bail.
16. In these circumstances, bail application is dismissed.

(ANUJA PRABHUDESSAI, J.)