

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

BAIL APPLICATION NO.1898 OF 2016

Sachin Hanumanta Devgirikar and Anr. Applicants

versus

State of Maharashtra ... Respondent

.....

- Mr.Satyavrat Joshi, Advocate for the Applicant.
- Mr.S.S. Pednekar, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 16th MARCH, 2017.

P.C. :

1. This is an application under section 439 of Cr.P.C. moved for bail by the applicants/accused. The applicants/accused are prosecuted for the offences punishable under sections 302, 307, 143, 145, 147, 148, 149, 427, 120(B), 201 of the Indian Penal Code and under sections 3(25), 27, 4(25) of the Arms Act and under sections 37(1)(3) of the Maharashtra Police Act, in C.R.No.283/13 of Swargate Police Station, Pune. The offence is registered at the instance of Navnath Suresh Lodha on 13/11/2013.

2. The incident took place near one Samrat Hotel at Kondhwa Pune at around 11.15 p.m. on 13/11/2013. The complainant along with deceased Kunal Pol, injured Sunny Gawate and Shirish Shetty were talking outside the hotel. The applicants/accused along with other accused namely Janglya @ Vishal Satpute and others arrived there. They were armed with weapons. Some of them were holding sickles, sticks and four of them were with pistol. They fired random. They also assaulted the witnesses Sunny Gawate and Shirish Shetty with sticks. Shirish Shetty had bullet injury on his thigh. They wanted to kill Kunal Pol. So they chased him and Kunal was shot at point blank range by co-accused Janglya @ Vishal Sham Satpute and Rohan Laxman Chavan. Kunal Pol died on the spot. Injured were shifted to hospital by police. Thereafter statement of Navnath Suresh Lodha was recorded by the police. The offence at C.R.No.283/13 was registered at Swargate Police Station, Pune. The applicant/accused Sachin Devgirikar was arrested on 25/11/2013 and the applicant/accused No.2 Rizwan @ Bablu Naseer Sayed was arrested on 18/11/2013. Hence this bail application.

3. The learned counsel for the applicants/accused has submitted that this Court has granted bail to one accused Datta Arjun Chavan on 02/08/2016 and therefore he prays for parity. It is further submitted that applicants/accused are innocent. They did not assault anybody. As per the statements of injured and the complainant and one witness Sagar Suresh Bagal, though statements of the applicants/accused were taken as they were present at the time of assault, no specific role is attributed to them. He further submitted that as per the statements of the eyewitnesses, the applicants/accused were holding sickles and Kunal Pol died due to bullet injury. He further submitted that there is variance in the statement under sections 161 and 164 of Cr.P.C. of eyewitnesses. He further submitted that though a pistol is recovered from each of the applicants/accused. The applicants/accused have not used the pistol at the time of incident and therefore no weightage can be given to the recovery of pistol from the applicants/accused. The learned counsel further submitted that the applicant/accused No.1

Sachin Devgirikar is not a history-sheeter and so there should not be any obstacle in granting bail to him.

4. The learned prosecutor while opposing bail application has submitted that this Court granted bail to accused Datta Arjun Chavan as it was on different ground. Earlier while granting bail this Court has given specific time bound frame to the learned Sessions Judge. However, it was not followed by the learned Sessions Judge and therefore liberty was given to accused Datta Chavan. Moreover, he submitted that Datta Chavan was not holding a pistol and he is not a history-sheeter and other factors were also considered at the time of granting bail. The learned prosecutor further submitted that one pistol was recovered from each of the applicants/accused and in the statements eyewitnesses i.e. Sunny Gawate and Shirish Shetty, have stated that total four persons were holding pistol. He also relied on the post-mortem report. He further submitted that there are two cases pending against the applicant/accused No.2.

5. Considered the submissions of learned counsel and also of the learned prosecutor. Perused FIR. Perused the statements of eyewitnesses and the injured. It is a pre-planned murder. All the accused were armed with weapons. As per the case of prosecution four of them were holding pistol. There is recovery of one pistol from each of the applicants/accused under panchanama by police. The deceased Kunal Pol had sustained multiple injuries including three fire arms injuries. No pistol was recovered from accused Datta Chavan to whom bail was granted. Case of the applicant/accused is different from accused Datta Chavan. Police have applied section 120-B of IPC, which is invoked.

6. Considering this, the bail application stands rejected.

(MRIDULA BHATKAR, J.)