

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

BAIL APPLICATION NO.2291 OF 2017

Sunil Bhimrav Shelar Applicant
Vs.
The State of Maharashtra Respondent

WITH
BAIL APPLICATION NO.2325 OF 2017

Vishal Manik Dhaware Applicant
Vs.
The State of Maharashtra Respondent

M. Shirish Gupte, Senior Counsel i/by Mr. Satyavrut Joshi for the Applicant in BA No.2291 of 2017.

Mr. Satyavrut Joshi for the Applicant in BA No.2325 of 2017.

Mr. Vinod Chate, APP for the State.
Mr. Aniket Nikam for original-complainant.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 13th December, 2017

P.C.:

1 Heard the learned counsel for the applicants. Perused
the papers of investigation.

2 These are the applications under Section 439 Code of Criminal Procedure. The applicants herein are arrested on 30th April 2017, for the offences punishable under Sections 302, 201, 120(B), 341, 143, 147, 148 and 149 of Indian Penal Code and Sections 3 and 4 read with Section 25 of Indian Arms Act. The investigation is completed and the charge-sheet is filed on 26th July 2017.

3 It is the case of the prosecution that on 27th April, 2017, the complainant- Parmeshwar alias Vikas Tatyaraao Kamble lodged a report at the police station alleging therein that he was acquainted with one Balasaheb Shankar Ghule. On 27th April 2017 at about 8.00 am., he had left the house of Balasaheb Ghule in the company of Balasaheb and Akshay Kiwale and had gone to the cattle shed. They had seen Rahul Kiwale passing from the front of the cattle shed. Thereafter at about 11.30 am., the complainant, Balasaheb and Akshay had left for Kirkatwadi by Scorpio car and on their way they were given a dash with a dumper, due to which, their vehicle had fallen in a ditch. The dumper of Milind Kiwale had dashed against

the vehicle of Balasaheb. Soon thereafter, the accused persons namely Milind Kiwale, Rahul Kiwale, Akshay Chaudhari, Datta Pokale and five unknown persons had alighted from Scorpio car and had shot at Balasaheb. It is alleged that the five unknown persons were armed with sickle and they all mounted assault upon Balasaheb, due to which he died an homicidal death and on the basis of the said statement, Crime No.157 of 2017 was registered at Haveli Police Station.

4 On 30th April 2017, the present applicants were arrested. The charge-sheet was filed on 26th July 2017 and the test identification parade was conducted on 30th October, 2017 i.e. admittedly after filing of the charge-sheet.

5 The supplementary statement of the complainant was recorded, in which he had disclosed names of the present applicants as persons to whom he had referred as five unknown persons. It is a matter of record that the procedure for taking test identification

parade has not been followed as per the Criminal Manual. The prosecution has relied upon the recovery memorandum under Section 27 of Indian Evidence Act, which led to recovery of weapons. There is no other cogent material against the present applicants. As far as the applicant in Criminal Bail Application No.2325 of 2017 is concerned, he was identified at the test identification parade. However, in the supplementary statement, the complainant has stated that although he was not identified at the test identification parade, he is sure that he was present at the time of incident. It appears that there was further investigation under Section 173(1) Cr.P.C. and a supplementary charge-sheet has been filed.

6 Mr. Nikam, learned counsel appearing for the intervenor submits that the CDR, which is collected in the course of investigation is restricted to 9.30 am. of 23rd April 2017 whereas the incident is dated 27th April 2017 at 11.30 am. In any case, as far as the present applicants are concerned, the CDR may not be relevant for the simple purpose that there is no cogent material against them.

In the present case, there is direct ocular evidence and the assailants were known to the complainant. As on today, it would be doubtful to record the finding that the applicants were present alongwith the principal accused at the time of incident and therefore they deserve to be enlarged on bail. It is, in these circumstances, the applicants deserve to be enlarged on bail on imposition of certain conditions.

7 It is made clear that the observations made hereinabove are prima facie in nature. The learned Sessions Court shall not be influenced by the above observations at the time of hearing the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits. Hence, the following order is passed :

ORDER

1 The applications are allowed.

2 The applicants be enlarged on bail on furnishing P.R. bonds in the sum of Rs.50,000/- each with one or more solvent sureties in the like amount.

3 The applicants shall not reside in Pune District till the commencement of the trial. They shall remain present before the trial Court only on the scheduled dates and shall not tamper with the evidence and shall not threaten the witnesses.

The applications are accordingly disposed of.

(*Smt. Sadhana S. Jadhav, J*)