

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2388 OF 2016**

Akshay Gajendra Rede

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Priyal G. Sarda for the Applicant

Mr. Prashant Jadhav, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 5th MAY, 2017

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 408 of 2016 registered with the Loni Kalbhor Police Station, Pune, for the alleged offences punishable under Sections 302 r/w 34 of the Indian Penal Code and under Section 4(25) of the Arms Act.

3. Learned Counsel for the applicant submits that initially 6 accused were arrested in the aforesaid C.R., however, subsequently, 4

accused were discharged from the said case. He submitted that as of today, there are 4 accused, who have been charged for the aforesaid offences. He submits that the applicant has not been named in the FIR. He submits that infact, there is no material on record to connect the applicant with the alleged offence.

4. Learned A.P.P opposes the application. He relied on the 164 statements of the discharged accused i.e. Aamir Tamboli, Swapnil Tupe and Someshwar Kotwal.

5. Perused the papers. The prosecution case rests entirely on circumstantial evidence. The incident in question has taken place on 22nd May, 2016 prior to 6:45 a.m. It is alleged that some of the accused had inimical relations with the deceased, as a result of which, he was murdered. From a perusal of the charge-sheet, it appears that the applicant has not been named in the FIR. There is a recovery of a bike allegedly used in the commission of the offence. It also appears that blood-stained clothes of the applicant have been recovered at the instance of some other co-accused, and not the applicant. There is no other evidence i.e. of last seen, CDRs,

recovery of any incriminating article or any other material to connect the applicant with the alleged offence. As far as the statement of Aamir Tamboli is concerned, his first statement was recorded under 164 on 13th June, 2016. In the said statement, he has not disclosed the name of the applicant. Infact, he has not disclosed anything. After about 4 months, Aamir Tamboli in his second statement recorded under Section 164 dated 17th October, 2016 has stated that he had seen the applicant on a Splender Motorcycle on a previous date i.e. on 21st May, 2016 and that other co-accused i.e. Rajesh Londhe, Mahadev Adlinge, Swagat Khaire and Akshay Rede were also with him. It is alleged by Aamir Tamboli that Rajesh Londhe disclosed to him that they were going to kill Amol Kotwal. Admittedly, there is nothing to show that Amol Kotwal was present with the applicant and others on 21st May, 2016. Similarly, the statements of other witnesses i.e. Someshwar Kotwal and Swapnil Tupe have also been recorded under Section 164 after about 5 months of the incident i.e. on 17th October, 2016. These statements also do not throw any light on the complicity of the applicant in the offence. There are no antecedents *qua* the applicant. Investigation is complete and charge-sheet is filed.

6. Considering the aforesaid, the application is allowed and the applicant is granted bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial.

7. The application is accordingly disposed of.
8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.