

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

BAIL APPLICATION NO.2322 OF 2016

Akshay Sanjay Shinde

... Applicant

Vs.

The State of Maharashtra

.. Respondent

with2390

BAIL APPLICATION NO.2390 OF 2016

Rushinath Vitthal Shinde

... Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr.S.R. Pasbola i/b Rahul Arote for the Applicant in
ABA/2322/2016

Mr.Satyavrat Joshi, in ABA/2390/2016

Mr.Prashant Jadhav, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 3, 2017

P.C. :

1. These two Bail Applications are decided together by a common order as both the applicants/accused are involved in the same C.R., facing charges under sections 302, 143, 147, 148, 149, 120B of the Indian Penal Code, under section 3/25 of the Arms Act and under section 135 of the Maharashtra Police Act.

The offence is registered at the instance of Sonu @ Yogesh Dnyaneshwar Walunj on 4.8.2015. It is the case of the complainant that in village Kamshet, Walunj family and Shinde family emerged as political rivals since 2009. The families continued their hostility. One Bharat Namdeo Shinde was killed and Mangesh @ Bunty Dnyaneshwar Walunj, amongst others, was prosecuted for the same. However, he was acquitted of the charge. In August, 2015, both the families have formed their respective panels and were contesting election against each other. On 4.8.2015, when the complainant and his elder brother Mangesh Walunj and other family members and associates were on election campaign in front of Pastakia Plaza, suddenly at around 12pm, the applicants/accused alongwith the co-accused arrived there and they circled around Mangesh. Shekhar Shinde fired at Mangesh from pistol and at that time, Balu Shinde was also holding pistol who threatened others. The injured Mangesh started running. At that time, the applicants/accused Rushinath and other co-accused followed him and others ran away. Mangesh was shifted to hospital. At that time, he was declared dead. On the same day, the complainant Dnyaneshwar approached the police and the offence was registered at C.R. No.200 of 2015 with Vadgaon

Maval police station. The applicants/accused Akshay was arrested on 8.8.2016 and Rushinath was arrested on 6.10.2016. Hence these Bail Applications.

2. The learned Counsel for the applicants/accused submitted that there is a confusion about the presence of the applicants/accused at the time of actual incident of assault. They relied on the affidavit of the complainant dated 11.9.2015 sworn by Yogesh Dnyaneshwar Walunj, the complainant, wherein he has stated that he had given FIR against some unknown person about the murder of his brother and he has wrongly mentioned the names of Raju Shinde, Gyaneshwar Shinde, Rohidas Shinde, Shekhar Shinde and those names are to be deleted. Thereafter his supplementary statement was recorded on 12.9.2015. the learned Counsel submitted that in his supplementary statement also, the complainant has mentioned he has lodged a complaint initially against unknown persons. The learned Counsel for the applicants/accused pointed out that the supplementary statement of the eye witnesses are also recorded wherein they have also stated that the names of those four persons were erroneously mentioned. It is further argued that the applicants/accused are not

attributed any role of assault. It is the case of the prosecution witnesses that they were only present at the relevant time. It was further argued that the applicants/accused do not have any criminal record and, therefore, they be granted bail.

3. Learned Prosecutor has opposed both the applications. They submitted that the names of both the accused i.e., Akshay and Rushinath are mentioned in the statement of the witnesses. Though the name of Akshay is not mentioned in the FIR, other witnesses have specifically mentioned that Akshay was also present alongwith the main assailant Shekhar Shinde and Balu Shinde. The learned Prosecutor has relied on the statements of Pradeep Bardade, Kolhya @ Ravindra Ashok Jadhav, Kiran @ Surya Hagavane, Vinod Gaikwad, Ranjit Yadav, Mangesh Rane. All these witnesses in their respective statements have specifically mentioned that after firing by Shekhar Shinde, the deceased Mangesh started running to save his life and at that time, some of the persons and Rushinath followed Mangesh. The learned Prosecutor has submitted that it is a case of murder and hence, the applicants/accused ought not to be granted bail.

4. Perused the FIR. The statements of the witnesses and postmortem notes. As per the postmortem notes, Mangesh Walunj died due to fire arm injury. It was one shot by the accused Shekhar Shinde and at that time, Balu was holding revolver to stop others. As per the statements of the eye witnesses, the applicants/accused gheraoed the deceased alongwith the principal accused Shekhar Shinde. Shekhar fired at him and thereafter, Mangesh started running. Some of them ran away and Rushinath and others followed the injured Mangesh. However, there is no evidence to show whether Rushinath further assaulted the deceased or not? Thus, in the absence of such evidence, as per the case of the prosecution, at this stage, it can only be said that they all gheraoed him and the applicants/accused were present when Shekhar Shinde fired at him. Thereafter, they all ran away. Considering this evidence and so also the submissions of the learned Counsel for the applicants/accused and the prosecution, I am inclined to allow these applications as under:

a) The applicants-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty thousand only) with one or two solvent sureties in the like amount.

- b) The applicants/accused shall stay away from their village i.e., Kamshet, for a period of 9 months and shall not enter the village except for attending the Court dates;
 - c) The applicants-accused shall not tamper with the evidence or pressurise the complainant or the witnesses;
 - c) The applicants-accused shall not indulge into any criminal activity and shall attend on all the Court dates;
 - d) The applicants-accused shall not abscond or leave India without prior permission of the Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of his address.
 - e) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.
5. Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)