

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2643 OF 2016**

Vishal Babasaheb Gaikwad)...Applicant

**V/s.
State OF Maharashtra)...Respondent**

Mr. Arun Rajput i/by Anjali Patil, Advocates for the Applicant.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 16th JANUARY 2017.

P.C. :

This is the second bail application of the applicant-accused in Crime No.10/2015 registered with Warje Malwadi Police Station for the offences punishable under Sections 143, 147, 148, 149, 302, 120B, 201 of IPC, under Sections 3,4,25,27 of the Arms Act and under Section 37(1) and 135 of the Maharashtra Police Act. The first bail application of the present applicant-accused was rejected by this Court with an observation that the present applicant was standing near the spot with his motor-cycle in running condition and after commission of murder of Sahin

Shinde, assailants occupied pillion seat of motor-cycle of the present applicant to flee from the spot. With this, this Court found case of the applicant not fit for grant of bail.

2 Heard learned counsel appearing for the accused-applicant. He argued that co-accused Vishal @ Shensha Jaysingh Lokhande has been released on bail by co-ordinate bench of this Court by order dated 2.12.2016 in Criminal Bail Application No.2248 of 2016. The learned counsel argued that case against this co-accused Vishal @ Shensha was more strong than the case against the present applicant. The learned counsel by taking me through the statements of eye witnesses has contended that co-accused Vishal @ Shensha was dancing on the scene of occurrence while Sachin was being murdered by the co-accused. Learned counsel further pointed out the fact that after commission of murder, Vishal @ Shensha had taken assailants named Nakul and Amey with him on his motor-cycle. The learned counsel further pointed out that there is evidence of telephonic conversation between the co-accused Vishal @ Shensha and the main accused persons in this case of conspiracy to commit murder of Sachin

Shinde. According to the learned counsel for the applicant-accused, with all this evidence against Vishal @ Shensha, subsequent to the rejection of bail application of the present applicant, Vishal @ Shensha has been released on bail by the co-ordinate bench of this Court and, therefore, applicant-accused is also entitled for the same treatment.

3 The learned APP opposed the application by contending that the present applicant has facilitated assailants to flee from the spot as they occupied pillion seat of the motor-cycle of the present applicant and, therefore, the present applicant is not entitled for bail.

4 I have carefully considered rival submissions and also perused the charge-sheet including statements of eye witnesses namely, Sachin Kale, Pratik Pasalkar and Ganesh Rajiwade. All these three eye witnesses are describing role of the present applicant as the person who was standing by the side of the road by keeping engine of his motor-cycle in running condition. These eye witnesses have further stated that Murli Khandagale and Yogesh Shingade occupied pillion seats of the motor-cycle of

Vishal Gaikwad for leaving the scene of the offence.

5 Statements of eye witnesses depict that when the offence of murder was being committed by co-accused, one of the accused namely, Vishal @ Shensha was dancing on the scene of the offence in order to exhort assailants and after hearing shouts that police have arrived at the scene, this co-accused Vishal @ Shensha had taken assailants' named Nakul and Amey along with him on his motor-cycle. Charge-sheet also reflected telephonic conversation between the co-accused Vishal @ Shensha and the assailants.

6 With this material against Vishal @ Shensha, he has been released on bail by order dated 2.12.2016 and observations in paragraphs 3 and 4 of the said order are relevant. They read thus,

“3).....Eye witnesses claim as they had seen the present applicant at the distance making gestures in order to exhort the accused persons and after hearing a cry that the police have arrived, applicant had taken Nakul and Amey along with him on his motor-cycle. The role attributed to the applicant was of exhortation and harbouring the offenders. Eye

witnesses are consistent about the role played by the present applicant.

4. The learned counsel for the applicant rightly submits that there is no material to even remotely indicate that applicant had actually participated in assaulting Sachin Shinde, neither he was armed with weapons.”

7 It is, thus, seen that co-accused Vishal @ Shensha to whom more serious role in the crime was attributed by the prosecution is enlarged on bail with observation that there is no material to even remotely indicate that applicant (Vishal @ Shensha) has actually participated in the assault. When co-accused with some more role in crime in question is already released on bail by this Court, on the principle of parity, the present applicant also deserves the same treatment and, therefore, order:

(1) Application is allowed.

(2) Applicant be enlarged on bail on
furnishing PR Bond in the sum of

Rs.50,000/- with one or more solvent sureties in the like amount.

(3) Applicant shall report to Warje-Malwadi Police Station on 1st and 3rd Sunday of each month, commencing from his release on bail till the framing of charge.

(4) Application stands disposed of .

(A. M. BADAR, J.)