

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

**BAIL APPLICATION NO.61 OF 2018**

Milind Shankar Kiwale .... Applicant

Vs.

The State of Maharashtra .... Respondent

Mr. A.P. Mundargi, Senior Counsel I/by Mr. Satyavrut Joshi for the Applicant.

Mr. Aniket Nikam for Intervener/Original complainant.

Ms. Veera Shinde, APP for the State.

Mr. R.K. Waikar, PSI, Haveli Police Station, Pune (Rural).

***Coram : Smt. Sadhana S. Jadhav, J.***

***Date : 3<sup>rd</sup> August, 2018***

P.C.:

1            Heard the learned counsel for the applicant and the learned APP.

2            This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 16<sup>th</sup> May 2017 in Crime No.157 of 2017, registered at Haveli Police Station, Pune for

the offences punishable under Sections 302, 201, 120B, 341, 143, 147, 148, 149, 212 of Indian Penal Code, 3(25) and 4(25) of the Indian Arms Act and 135 of The Maharashtra Police Act. The investigation is completed and the charge-sheet is filed.

3           It is the case of the prosecution that on 24<sup>th</sup> April 2017, Parmeshwar alias Vikas Tatyaram Kamble, who was working as a driver on the Scorpio of Balasaheb Shankar Ghule lodged a report at the police station alleging therein that on that day i.e. on 27<sup>th</sup> April 2017, he alongwith his Master, Balasaheb Ghule and Akshay Kiwale were proceeding towards Kirkatwadi. On the way, they had seen a white-coloured Scorpio. They had passed the said vehicle. No sooner the dumper of the present applicant had come from the opposite direction, Tanaji Kamble who happens to be driver on the dumper of the present applicant had given a dash to the Scorpio of the complainant. Soon thereafter the Scorpio had reached to the spot, the present applicant, his associates Rahul Kiwale, Akshay Chaudhari, Datta Pokale and others had alighted from the Scorpio. Tanaji Kamble was armed with revolver, the present applicant was

armed with gun, Rahul Kiwale was armed with revolver and five others were armed with sickles. Tanaji Kamble had shot at Balasaheb Ghule. The complainant had seen the others shooting at Balasaheb.. When he alighted from the Scorpio, he was told by the accused persons to get aside. Balasaheb was then assaulted by sickle. He was rushed to the hospital and declared dead on admission.

4            Learned Senior Counsel submits upon instructions that the said dumper does not belong to the present applicant. It is also submitted that the statements of the alleged eye witnesses were recorded in the course of investigation and that their statements are inconsistent with each other and therefore the applicant deserves to be enlarged on bail.

5            The statement of Akshay Kiwale, who also happens to be an eye witness shows that Tanaji Kamble and Rahul Kiwale had assaulted Balasaheb Ghule. It is submitted that the witness Akshay Kiwale does not name the present applicant and therefore it is doubtful as to whether the applicant was present at the scene of

offence. The investigating agency has also recorded statement of one Navnath alias Bapu Babasaheb Shelar, who has stated that the present applicant and Rahul Kiwale owned a Crusher. That the vehicles used to ply on the road, thereby causing violation of the environment rules. There was grievance raised in the Gram Sabha about shutting down the said Crusher and therefore Milind Kiwale and Rahul Kiwale were annoyed with Balasaheb Ghule. He has also disclosed that Balasaheb Ghule had informed him that on one occasion, he was threatened by both the brothers. The crushers were shut down. It is also contended that prior to that Datta Pokle and Akshay Chaudhari had laid a trap eliminating Balasaheb, however Sinhgad police had arrested them. As far as the incident is concerned, he had stated that he had seen the Scorpio of the applicant at the spot at the time of incident. According to learned Senior Counsel, the said Scorpio also does not belong to the present applicant.

6            Learned APP has submitted that statement of witness, Parmeshwar Kamble has been recorded under Section 164 of Cr.P.C.

and according to him Milind Kiwale was present. He had also seen Milind Kiwale shooting on the rear side of the jeep, in which the witness was seated. He has further stated that Balasaheb Ghule was alighting from the Scorpio, at that time Milind Kiwale and Rahul Kiwale and three others had pulled Balasaheb Ghule down. They had brutally assaulted him with sickles on his head, face and abdomen.

7            Learned Senior counsel submits that the statement of Akshay Kiwale is also recorded under Section 164 of Cr.PC., which is consistent with his statement under Section 161 of Cr.P.C. and he does not name the present applicant.

8            Taking into consideration the fact that the first informant is an eye witness, the statement recorded under Section 164 of Cr.P.C. is also consistent with his statement on the basis of which the offence was registered. Coupled with the fact that there was motive to eliminate Balasaheb Ghule. It is pertinent to note that the main role attributed by Tanaji Kamble who happens to be the driver of the present applicant as well as Rahul Kiwale who happens to be his brother, the

applicant does not deserve to be enlarged on bail. The application being sans-merits, stands rejected.

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