

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

BAIL APPLICATION NO. 2880 OF 2017

Sumit Ashok Lot Applicant
Vs.
The State of Maharashtra Respondent

ALONGWITH
BAIL APPLICATION NO. 75 OF 2018

Akshay Atmaram Ahire Applicant
Vs.
The State of Maharashtra Respondent

Mr. Aniket U. Nikam I/by Mr. Aashish Satpute for the Applicant in
BA No. 2880 of 2017.

Mr. H.P. Ingle I/by Mr. Tushar N. Khandare for the Applicant in BA
No. 75 of 2018.

Ms. Veera Shinde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 6th July, 2018

P.C.:

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

2 These are the applications under Section 439 Code of Criminal Procedure. The applicant in Criminal Bail Application No. 75 of 2018 was arrested on 26th May 2017 whereas the applicant in Criminal Bail Application No. 2880 of 2017 was arrested on 1st July, 2017 in Crime No.196 of 2017, registered at Upnagar Police Station, Nasik, for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B read with 34 of Indian Penal Code and under Section read with 3/25 of the Indian Arms Act.

3 It is the case of the prosecution that on 25th May 2017, one Akshay Bhausaheb Jadhav lodged a report at the police station alleging therein that at about 3.45 pm. to 3.50 pm., he was in the company of one Tushar Sable and they were waiting in the parking slot of Harsh premises alongwith Rakesh. At about 4.00 pm., suddenly an Indigo Car had arrived at the spot and 7-8 persons armed with country made pistol and other weapons alighted from the said car. They had created a terrorizing situation and therefore, the complainant and the accused started fleeing from the spot. They

tried to run from the said spot and reached in the adjacent building and entered in the house of Malgunde and they locked the door. They were watching the incident from the balcony of the flat of Malgunde and saw that 7-8 persons had assaulted Tushar Sable. One of them fired on him and others had caused him grievous injury to which he succumbed.

In Criminal Bail Application No. 2880 of 2017 :

4 It is the case of the prosecution that at the time of incident, the applicant was seated in Indigo Car on the rear seat alongwith three other persons, whereas his brother Pavan was seated next to the driver. The eye witnesses to the incident have stated that the presence of the applicant at the time of the incident was noted by the eye witnesses. The applicant was not identified at the time of test identification parade.

5 The co-accused, Amol Vishnu Gangurde has been enlarged on bail by this Court although he had been identified at the time of test identification parade and this Court had observed that the identification was on the basis of the face-book profile of the

applicant and that the accused was seen in the contact list of Shekhar Nikam. The applicant has one criminal antecedent, wherein he has been charge-sheeted for the offence under Sections 143 and 427 of Indian Penal code. The applicant in the above mentioned facts deserve to be enlarged on bail.

In Criminal Bail Application No. 75 of 2018 :

6 The applicant in Criminal Bail Application No. 75 of 2018 has also been identified on the basis of the face-book profile. Besides, the test identification parade, the investigating agency has recorded the statements of two witnesses under Section 164 of Cr.P.C. One of the witness namely Rushikesh Arun Pagare has specifically stated that the applicant had sent him several messages on the face-book asking him to keep a watch on the movements of Bandu Murtadak, who happens to be one of the assailant of Kiran Nikam i.e. the brother of Shekhar Nikam. That he had continuously asked Pagare about the location of Bandu Murtadak. A week before the incident, the applicant had sent a message to the witness

stating therein that the accused in Kiran's murder case i.e. Santosh and Ganesh have been arrested by Police and that he should keep trap on the location of Bandu Murtadak. In the 164 Cr.P.C. statement, the present applicant had sent a message to the applicant at about 8.30 pm. and he had said that he alongwith others had taken "the wicket" of Bandu Murtadak. The witness was directed to call his brother. He was also directed to delete the message and not to leave the house and thereafter switch off the cell-phone and thereafter the applicant was out of reach. On 26th May, 2017, the witness had read the news about the said incident in the 'Lokmat Daily' and he had learnt that in fact it was Tushar, who was eliminated and not Bandu Murtadak. The innocent person unconcerned with the murder of Kiran Nikam was eliminated by the present applicant and the co-accused. They would be charged under Section 301 of the Indian Penal Code as well, since, there was no motive to eliminate Tushar and that they had mistaken Tushar to be Bandu Murtdak. The statement of the witness also recorded under Section 164 Cr.P.C. on oath.

7 Learned APP submits that the applicant was arrested on 26th May 2017 i.e on the very next day and blood stained clothes are recovered from the applicant under Section 27 of the Indian Evidence Act. The material as far as recovery is concerned can be appreciated at the time of trial. As on today, the statement of the witnesses recorded under Section 164 of Cr.P.C. is more than sufficient to hold that there is incriminating material against the applicant.

8 Learned counsel for the applicant submits that even assuming that the message was sent, it cannot be considered as an extra judicial confession and therefore the applicant deserves to be enlarged on bail. The said submission is unfounded in the facts of the case and hence the applicant, who had played an active role in the murder of Tushar does not deserve to be enlarged on bail. The application being sans-merits, stands rejected.

9 Upon considering the papers of investigation and submissions advanced, this court is of the opinion that the applicant- Sumit Ashok Lot in Criminal Bail Application No. 2880 of 2017 has made out a case for grant of bail.

10 The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial.

Hence, the order :

ORDER

i) The Criminal Bail Application No. 2880 of 2017 is allowed.

ii) The applicant – Sumit Ashok Lot be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

iii) The applicant- Sumit Ashok Lot shall not reside in Nasik till the conclusion of the trial except for attending the scheduled dates at the time of trial.

iv) Upon being released on bail, the applicant Sumit Ashok Lot shall give an undertaking to the investigating officer about his address, cell-phone number and other details and more particularly that he would attend each and every date at the time of trial.

v) The Criminal Bail Application No. 75 of 2018 stands rejected.

(Smt. Sadhana S. Jadhav, J)