

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

BAIL APPLICATION NO.140 OF 2018

Sanjay Dattatray @ Shashikant Shinde Applicant

Vs.

The State of Maharashtra Respondent

Mr. Rupesh Thobde for the Applicant.

Mr. S.R. Agarkar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 5th February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 9th August 2017 in Crime No.171 of 2017, registered at Velapur Police Station, District Solapur for the offences punishable under Sections 302, 307, 323, 504, 506 read with 34 Indian Penal Code, under Sections 3(25), 39 of Arms Act and under Rules 32(3) of Arms Rules.

3 It is the case of the prosecution that on 9th August, 2017, Atul Nishikant Shinde lodged a report at the police station alleging

therein that the father of the present applicant happens to be their paternal uncle i.e. the brother of Nishikant Shinde. There are civil disputes between the brothers over partition and possession of land in gat no.114, situate at Velapur. That the father of the present applicant, who happens to be original accused no.1 has filed a suit, which is pending in the Court at Malshiras. On 9th August, 2017, the brother of the complainant namely Ajay Nishikant Shinde and the complainant had taken a tractor in the disputed land. Dattatray Shinde, who happens to be father of the present applicant had objected the same. There was a verbal altercation. Dattatray had returned home at about 3.00 pm. The applicant herein had been to the agricultural land and had abused the complainant and his brother Ajay. There was verbal altercation between the complainant and the present applicant. In the meanwhile, Shashikant alias Balasaheb Namdeo Shinde, who happens to be maternal uncle of the present applicant had intervened the said quarrel. At that juncture, the father of the applicant had returned from home armed with gun and threatened Shashikant for intervening in their quarrel and immediately fired a bullet at Shashikant. Shashikant had collapsed on the ground. Upon seeing the incident, Ajay had tried to flee from the spot and at that time Dattatray and Ajay had chased him but had not caught hold of him. Shashikant had succumbed to the bullet injury.

4 The complainant happens to be an eye witness to the incident. Learned counsel for the applicant submits that in fact there was verbal altercation between the applicant and the brother of the complainant namely Ajay. The applicant had no knowledge that their father would return home with a loaded gun and would shoot anybody. They had not even anticipated that such an incident would take place and therefore they cannot be detained in prison with the aid of Section 36 Indian Penal Code.

5 No specific role is attributed to the present applicant. He was having a verbal altercation with the complainant and his brother and at that time suddenly their father had appeared on the scene of offence with gun and had shot at Shashikant. Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicant deserves to be enlarged on bail. The co-accused Dattatray shall not claim parity with the present applicant, as the specific role has been attributed to him. It is clear from the papers of investigation that the father of the applicant is an author of the fatal injuries sustained by Shashikant @ Balasaheb Shinde.

6 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall

not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

- 1 The application is allowed.
- 2 The applicant 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.

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