

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 441 OF 2018**

Babulal Laxman Mohal. .. Applicant.

V/s.

State of Maharashtra. .. Respondent.

Mr. Satyavrat Joshi, advocate for applicant.

Mr. Vinod Chate, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 3, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant is arrested on 31/3/2017 in Crime No. 45 of 2017 registered at Alankar Police Station for offence punishable under section 307 read with section 34 of the Indian Penal Code and section 3 read with 25 of the Arms Act and section 37(1) of Maharashtra Police Act. The investigation is completed and charge-sheet is filed.

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3 It is the case of the prosecution that on 30th March, 2017 Nikhil Ankush Giri was injured and was admitted in Dinanath Mangeshkar Hospital in ICU, as he had sustained a bullet injury. Being medico legal case, his statement was recorded. He had disclosed that he was the co-accused of the present applicant in one of the cases. Thereafter, there were intermittent quarrels between them. The applicant had allegedly challenged the complainant that he would score over him some day. On 30th March, 2017, the applicant called upon the complainant near Alankar bridge. He reached there by 11.30 a.m. He strongly realised that Sachin @ Bala Vithal Sonavane had shot a pistol in his abdomen and that the applicant was standing nearby. The complainant was sure that it was at the instance of the present applicant that Sachin Sonavane had shot on him because he had no personal grudge against Sachin Sonavane.

4 Learned APP submits that the applicant has criminal antecedents, in as much as in 2015, he was externed for one year from Pune district. After returning, he has continued with the same activities. Therefore, he does not deserve to be enlarged on bail.

5 As against this, the learned Counsel for the applicant submits that taking into consideration the facts of this case, the only material

against the present applicant is that he had hatched conspiracy to assault the complainant.

6 It appears from the police record that the applicant is hardcore criminal. However, in the present case, the role attributed to him is that he was present at the scene of offence with Sachin Sonavane and more particularly, the complainant had reached the spot at the request of the present applicant.

7 In the above circumstances, the applicant deserves to be enlarged on bail as he has been in custody since 31st March, 2017. However, it is made clear that co-accused Sachin Sonavane shall not claim parity with the present applicant.

8 The aforesaid observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge application or at the time of trial.

9 Hence, following order is passed :

ORDER

(i) The application is allowed.

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- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. One Lakh with one or more solvent sureties in the like amount.
 - (iii) The applicant shall not tamper with the evidence.
 - (iv) The applicant shall not reside in Pune district till commencement of the trial.
 - (v) Within four weeks' from the date of release on bail, the applicant shall furnish to the Investigating Officer of Alankar Police the details of his place of residence, cell phone numbers and cell phone numbers of sureties. Upon breach of this order, the prosecution would be at liberty to file an application under section 439(2) of the Code of Criminal Procedure, 1973.
 - (vi) The applicant shall also furnish an undertaking to the Sessions Court that he shall attend each and every date of hearing. Upon failure to attend any two consecutive dates, prosecution would be at liberty to file an application under section 439(2) of the Code of Criminal Procedure, 1973.
- 10 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]