IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 553 OF 2018

Amol Vishnu Gangurde **...Applicant**
Vs.
State of Maharashtra **...Respondent**

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Mr. B.M. Jadhav for Applicant
Mr. Rajan Salvi -APP
Mr. Mahendra Chavan, P.I. Upnagar Police Station, Nashik
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CORAM : SMT. SADHANA S. JADHAV, J.
DATE: JUNE 12, 2018

P.C.

1. Heard. This is an application under section 439 of the Criminal Procedure Code. The Applicant herein is arrested on 26th May, 2017 in Crime No. 196 of 2017 registered at Upnagar Police Station, Nashik for the offences punishable under section 302, 143, 147, 148, 149, 120(B) r/w. 4 of the Indian Penal Code and under the provisions of the Arms Act.

2. It is the case of the Applicant that on 25th May, 2017, one Akshay Bhausaheb Jadhav lodged a report at the police station alleging therein that at about 3.45 p.m. to 3.50 p.m. he was in the company of one Tushar Sable and

they were waiting in the parking slot of Harsh premises along with Rakesh. At about 4 p.m., 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 form 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.

3. The accused were arrested on the next day of the incident. They were taken for test identification parade on 4th August, 2017. The supplementary statement of the witnesses, who had identified the accused at the time of test identification parade, was recorded on 4th August, 2017. One Akshay Jadhav had submitted that on the date of incident, he had identified Shekhar Nikam, who happens to be a political activist. When he was checking the contact list of Shekhar Nikam on the facebook, he had seen present first Applicant and he had identified the applicant at the time of test identification parade.

4. The learned counsel for the Applicant submits that in fact, the test identification parade was recorded practically after more than 10 weeks of the

alleged incident and the supplementary statement was recorded subsequently. It is also submitted that the significance of the test identification parade would be lost since the witness had seen the present Applicant on the face book in the contact list of Shekhar Nikam. Besides, test identification parade, there is no other material to connect the present Applicant with the homicidal death of Tushar.

5. The learned APP vehemently submits that there is no motive on the part of the Applicant to eliminate Tushar Sable. The Applicant has no antecedent.

6. Taking into consideration the aforesaid facts, this Court is of the opinion that the Applicant deserves to be enlarged on bail. The observation made herein above are prima facie in nature and are restricted for the present application filed under section 439 of Cr.P.C. and shall not be taken into consideration at time of deciding the application for discharge or at the time of trial. Hence, the following order:

ORDER

(i) Bail application is allowed.

(ii) The Applicant be enlarged on bail on furnishing a P.R. Bond in a sum of Rs.50,000/- and one and more solvent sureties in the like amount.

(iii) The applicant shall not reside in Nashik except for attending the dates at the time of trial.

Bail application stands disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]