

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1430 OF 2018**

Shekhar @ Mahesh Ravindra Thakar. ..Applicant.

V/s.

State of Maharashtra. ..Respondents.

Mr. M.S. Mohite I/b. Mr. Shantanu R. Phanse, advocate for applicant.

Mr. Y.Y. Dabke, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 7, 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 herein is arrested on 15/8/2017 in Crime No. 269 of 2017 registered at Sinhagad Road Police Station for offence punishable under section 302, 201 read with 34 of the Indian Penal Code and section 4 read with section 25 of the Indian Arms Act.

3 It is the case of the prosecution that the applicant happens to be the friend of Pappu Shedge. That on 4/6/2017 Nilu Aakhade had lodged a report at the police station alleging therein that his son Avinash was in love with Ms. X who happens to be the daughter of Namdev Sanas. That Pravin is the brother of Ms. X. That she was insisting upon

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getting married to Avinash and the same was disliked by the family members. However, Avinash and Ms. X continued to write letters to each other. The family members of Ms. X had grudge against Avinash. On 4/6/2017 Avinash had died a homicidal death. The first information report was lodged, on the basis of which, Crime No. 198 of 2017 was registered at Sinhgad Road Police Station on 4/6/2017. That both brothers of Ms. X were arrested i.e. Roshan and Pravin. However, Pravin was a juvenile in conflict in law and therefore, released on bail on 22/6/2017. Roshan was also arrested. Namdev Sanas was worried about Pravin and therefore, he was made to stay with Hanumant Sanas at Dapade. On 12/8/2017 Pravin had also met with homicidal death and his body was found at Dhayareswar Temple, at Dhayari, Pune. Namdev Sanas lodged a report about the said incidence to the said police station, on the basis of which Crime No. 269 of 2017 is registered against in Crime No. 269 of 2017.

4 Pappu Shedge was arrested. The applicant is also arrested on 15/8/2017. It is pertinent to note that his name is not mentioned in the FIR. However, it surfaced in the course of investigation. It appears that the name of the applicant was disclosed by Pappu Shedge while in remand. Thereafter, there is recovery of Bamboo Stick at the instance of the applicant. It is pertinent to note that Pravin had sustained chop injuries.

5 It is the case of the prosecution that the applicant herein happens to be the close friend of Pappu Shedge and that Pravin was eliminated only to satisfy personal vendetta in respect of the murder of Avinash.

6 In the course of investigation, investigating agency recorded statement of Bharat Kuchekar. He had disclosed to the police that he also happened to be the friend of deceased Pravin. According to Bharat Kuchekar, on 12/8/2017 Ganesh Kivale had informed him that he wants to discuss an important matter with him. He was called to Savitri Garden where Ganesh Kivale was accompanied by Pappu Shedge, Sunny Ghule and the present applicant. That Sunny Ghule had brandished his sickle at Bharat Kuchekar and had directed him to call Pravin immediately. Thereafter, Bharat Kuchekar had called Pravin Sanas. Pravin was called near Dhayareswar temple. According to Bharat Kuchekar, present applicant was armed with a sickle as well as Bamboo. They were waiting in ambush for Pravin and the moment, he arrived, all the four persons had mounted assault upon Pravin. According to the said eye witness, the applicant had assaulted Pravin with Bamboo.

7 Learned Counsel for the applicant has drawn attention of this Court to the statement of another witness-Tejas Kivale who has stated that on the same day, during the intervening period, Ganesh Kivale had asked him to drop Shekhar and Pappu near Dhayareswar temple. Thereafter, he was asked to drop Sunny Ghule and Ganesh Kivale. It appears that Bapu Kuchekar was not held in detention. That the applicant was moving around with the witness Bapu Kuchekar and the same does not find place in his statement. It is apparent on the face of the record that the principal accused are Pappu Shedge and Sunny Ghule and Ganesh Kivale. Moreover, according to the eye witness, the applicant was armed with scythe as well as bamboo. However, he has chosen to assault with bamboo. All the injuries are incise injuries. In any case, the allegation against the applicant is that he is a friend of Pappu Shedge. In view of the inconsistency in the statement of the eye-

witnesses. Moreover, there were many witnesses who had seen some people fleeing from the spot. However, there is no test identification parade. In view of the above mentioned facts and in view of the fact that the role of the applicant can be distinguished from the role of the other accused, the applicant deserves to be enlarged on bail. The co-accused shall not claim parity with the present applicant.

8 The observations are prima facie in nature and 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 trial.

9 Hence, the following order is passed :

ORDER

(i) The application is allowed.

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

(iii) The applicant shall not reside in Taluka Haveli till the conclusion of the trial.

(iv) The applicant shall not tamper of the evidence.

10 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]