

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

BAIL APPLICATION NO. 1780 OF 2018

Mohsin Khutbuddin ShikalgarApplicant

V/s.

The State of MaharashtraRespondent

Mr. Hrishikesh Mundargi a/w. Subir Sarkar i/b. Mr. Madan Gupta for the applicant.

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

Mr. Samadhan Vasant Bile, Assistant Police Inspector,
Miraj Gramin Police Station, Sangli present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 05th SEPTEMBER, 2018.

P.C.:

. This is an application for bail under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who is facing trial in Sessions Case No.132 of 2016 for the offences punishable under sections 143, 147, 148, 302, 324 r/w. 149, 109 and 120-B of the Indian Penal Code and provisions of Indian Arms Act.

2. The afore said case arises from C.R.No.128 of 2016 registered at Miraj (Rural) Police Station, Dist. Sangli pursuant to the first information report lodged by Vishal Kamble, brother of the deceased Sudhir Kamble.

3. Heard Mr. Hrishikesh Mundargi, learned counsel for the applicant and Mr. S.R. Agarkar, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The case of the prosecution in brief is that on 29/04/2016, at about 08:45 p.m., the first informant and his brother Sudhir Kamble were proceeding towards their residence by their motor cycle. When they reached near Vijay Nagar village, one unknown person came on a motor cycle and kicked his motor cycle and when they fell down, three other persons who had came by a rickshaw assaulted them with sticks and stumps. Sudhir Kamble expired as a result of the injuries sustained in the said incident.

5. The first informant had given his supplementary statement on 01/05/2016 wherein he has disclosed the motive for the crime. He has stated that during Ambedkar Jayanti procession, the co-accused Mayur Kamble and Mahesh Kamble had assaulted some small children from the locality and that when the deceased had questioned them about the said incident, Mayur and Mahesh had threatened to cause his death.

6. In the course of the investigation, the applicant and the other co-accused came to be arrested. The only material against this applicant is that while he was in custody, he has made a disclosure statement pursuant to a sword which has been recovered. There is no prima facie material to show that the applicant had used the said sword or that it was stained with blood.

7. The prosecution has also relied upon the statement of witnesses- Khijar Ghulam Mushrif who claims to have seen the applicant and others assaulting said Sudhir Kamble and the first informant. Mr. S.R. Agarkar, learned APP has also brought to my notice the statement of Sanket Kamble. He states that on 30/04/2016, he had gone to the hospital and said Sudhir had informed him that he was assaulted by 17 to 18 persons including the applicant herein. It is to be noted that the name of the applicant does not figure in the first information report or in the supplementary statement made by the first informant. Furthermore, the other co-accused i.e. Dr. Mahesh Kamble and Dr. Mayur Kamble who have been named by Sanket and Khijar have been granted bail by this Court. The role attributed to the present applicant is similar to that attributed to these two co-accused who have been enlarged on bail.

8. Considering the above facts and circumstances, in my considered view, the present applicant is entitled for bail on the ground of parity.

9. Under the above circumstances and in view of the discussion supra, the bail application is allowed on following terms and conditions :-

(a) The applicant who is facing trial in Sessions Case No.132/2016 pending before the Additional Sessions Judge, Sangli, is ordered to be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties in the like amount, to the satisfaction of Additional Sessions Judge, Sangli.

(b) The applicant shall not reside at Miraj for a period of six months.

(c) The applicant shall remain present before the concerned Police Station as and when called.

(d) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(e) The applicant shall not change his residential address without prior intimation to the Additional Sessions Judge, Sangli.

(f) The applicant shall not interfere with the first informant and other witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)