

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 2076 OF 2017**

Mr. Amjad Razzak Khan

....Applicant.

Vs.

State of Maharashtra

....Respondent.

Mr. Rizwan Merchant a/w Gayatri Gokhale, Anjali Awasthi i/by Kaif Ansari for the Applicant.

Mr. Ameet Palkar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 19th JUNE, 2018.

P.C.:-

This is an application under Section 439 of the Code of Criminal Procedure for bail in CR No. 473 of 2016 dated 16th October, 2016 registered with Vakola Police Station, Mumbai and subsequently renumbered as CR No. 68 of 2016 registered with DCB, CID Unit VIII Andheri, Mumbai under Sections 302, 120(B), 34 of the Indian Penal Code, under Sections 3, 25, 27 of the Arms Act and under Sections 37(1)(A) r/w 135 of the Bombay Police Act, now culminated into Sessions Case No.137 of 2017.

2 Heard the learned counsel appearing for the Applicant, the

learned counsel for the first informant and the learned APP. Perused the charge sheet.

3 The name of the deceased is Bhupendra Hiraji Veera. The date and time of the incident is 15th October, 2016 at about 9.50 p.m. The first information report in the present crime is lodged on 16th October, 2016.

It is the prosecution case that, the Applicant and his father Razzak Abbas Khan had constructed several unauthorized and illegal constructions in the vicinity of Kalina, Kurla (West). That the deceased Bhupendra Veera had made various complaints with the Municipal Corporation for the said illegal constructions and on one of such complaints, the office premises of the Applicant and his father, which was about 40 years old, was demolished by the Municipal Corporation. That, the Applicant also received a notice pertaining to the illegal construction of his building namely "Lalla Mansion". The Applicant and his father, therefore, were having grudge against the said Bhupendra Veera (deceased) and it is the prosecution case that, the accused persons therefore, conspired to eliminate Bhupendra Veera. That, in furtherance of the conspiracy, it is alleged that on 15th October, 2016 at about 9.50 p.m., the Applicant fired bullets from an

illegally procured fire arm and killed the said Bhupendra Veera at his residential premises. The first information report is lodged by Mr. Sudhir Gala, the son-in-law of the deceased. During the course of investigation, the Applicant came to be arrested on 17th October, 2016 and after completion of investigation the police have submitted the charge sheet.

4 The present case is based on the circumstantial evidence. The prosecution has propounded the following circumstances against the Applicant. (i) Motive; (ii) Recovery of fire arm, at the instance of the Applicant under Section 27 of the Evidence Act; (iii) the Applicant was seen in the near periphery of the residence of deceased, prior to the incidence and, (iv) Extra judicial confession, given by the Applicant to his driver namely Mr. Gulam.

5 As far as the first circumstance of motive is concerned, there are more than one witnesses who speak about the same and it is duly corroborated.

As far as, the second circumstance of recovery of fire arms is concerned, it is to be noted here that, the same has been recovered from the terrace of the building of the Applicant from beneath a water tank. The said place was easily accessible to the other residents of the

building and as per the recovery panchanama itself, *prima facie* it appears that, there was no lock to the door of the said terrace or was not in exclusive possession of the Applicant.

The third circumstance i.e. of the Applicant was seen in the periphery of the house of the victim on the date and prior to the time of incident is concerned, at this stage, does not lead the prosecution case any further. Mere presence of the Applicant near the house of the deceased can be a coincident and in the absence of sufficient and cogent evidence to that effect and *prima facie* in the absence of any circumstance pointing that the Applicant entered into the house of the deceased and fired arm at him, the said circumstance at this stage has to be kept aside from consideration. It is to be further noted here that, the wife of the deceased was present inside the house at the time of alleged assault and in her statement, it is stated that she did not hear the sound of a gun shot.

The last circumstance of extra judicial confession given by the Applicant to his driver Mr. Gulam is concerned, the statement of the said witness is recorded after six days from the date of incident and after a period of about 5 days from the date of arrest of the Applicant. The prosecution will have to explain the said delay at the

behest of Mr. Gulam in informing the investigating agency the said fact immediately to the police and the same can be done only at the time of trial.

6 Thus, *prima facie*, it appears that except there being a circumstance of strong motive at the behest of Applicant, the other circumstances propounded by the prosecution cannot be said to have sufficient for showing the complicity of the Applicant in the present crime.

7 In view of the above, the Applicant can be released on bail.

Hence, the following order.

- a) The Applicant be released on bail in CR No. 473 of 2016 registered with Vakola Police Station, Mumbai and subsequently renumbered as 68 of 2016 registered with DCB, CID Unit VIII Andheri, Mumbai, now culminated into Sessions Case No.137 of 2017, on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

- b) After his release from Jail, the Applicant shall attend the office of DCB CID, Unit VIII, Andheri on every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- c) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- d) Any two consecutive defaults in complying with the afore-stated conditions will attract the provisions of cancellation of bail.
- e) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

8 Application is allowed in the aforesaid terms.

9 Needless to mention that the observations made here-in-above are *prima facie* in nature and in context of deciding the present bail Application. The Trial Court, shall not get influenced with the same at the time of conducting trial.

(A.S. GADKARI, J.)