

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2757 OF 2017***

Balu Kisan Pakire

Applicant

Versus

The State of Maharashtra

Respondent

Mr.Vivek Vijay Salunke, for the applicant.

Mr.Y.M.Nakhwa, APP, for the State.

CORAM : SMT. SADHANA S.JADHAV, J.

DATE : 8th February, 2018.

P.C. :

1. Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 17th June 2016 in Crime No.285 of 2016, registered at Warje-Malwadi Police Station, Pune. The investigation is completed and the charge-sheet is filed on 9th September 2016 against the applicant and others for the offences punishable under Sections 302, 341, 120(B) read with 34 Indian Penal Code, under Section

3(25) of Arms Act and under Section 37(1) read with 135 of Mumbai Police Act.

3 It is the case of the prosecution that on 11th June, 2016, Vilas Sitaram Bharam lodged a report at the police station alleging therein that on 10th June, 2016, at about 11.30 pm., when his brother Bajrang Sitaram Bharam was returning home on his Scooty Pep, he was assaulted by some unknown persons for some unknown reason and has caused homicidal death of his brother Bajrang. On the basis of the report, Crime No. 285 of 2016 was registered.

4 In the course of the investigation, the investigating agency had learnt that the wife of the deceased was having illicit relations with the co-accused namely Aashish Nalawade. The investigation is shifted in the said direction. They had called the wife of the deceased to the police station. The relatives of the deceased more particularly the brother-in-law Babulal Laxman Mohol was present in the police station. In the presence of the witnesses, the wife of the deceased is alleged to have disclosed that she had developed illicit relations with Aashish. She was called to the police

station where she had disclosed to the police that she had hatched a conspiracy with Aashish to eliminate Bajrang. There was no material which could be converted into legal, admissible, substantive evidence against her and hence she was enlarged on bail by this Court vide order dated 6.2.2018.

5 As far as the present applicant is concerned, the only material against the applicant is that he happens to be the friend of the original accused No.1 – Ashish Nalawade. Both of them were working as drivers with Dr. Bendale. There is a strong suspicion that Ashish Nalawade had eliminated Bajrang Bharam with the aid of the present applicant. It appears that in the course of investigation it was revealed that the applicant had talked with the principal accused i.e. Ashish Nalawade. The applicant was arrested on 17.6.2016, whereas the blood stained clothes are recovered on 17.6.2017. The clothes of the applicant were recovered. It is alleged that two cellphones have been seized at the instance of the applicant.

6. The learned counsel for the applicant rightly submits that the compilation of the charge-sheet does not contain any material which can be converted into legal, admissible, substantive evidence and hence the applicant deserves to be released on bail.

By an order dated 6.2.2018, one of the principal accused Suvarna Bharam, who happens to be wife of deceased who, according to the prosecution, had conspired to eliminate her husband since he had learnt that she was having an affair with Ashish Nalawade. It is in these circumstances, the applicant deserves to be enlarged on bail.

7. It is made clear that the co-accused shall not claim parity with the present applicant or with Suvarna Bharam.

8 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order

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/- with one or more solvent sureties in the like amount.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)