

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2299 OF 2017

Abhimanu @ Khandu Prakash Shinde ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION 1201 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 2299 OF 2017

Sonu @ Yogesh Dnyaneshwar Walunj ...Intervenor

In the matter between ...Applicant
Abhimanu @ Khandu Prakash Shinde

Versus

The State of Maharashtra ...Respondent

Mr. Vikas B.Shivarkar for the applicant.

Mr.Kalpesh V. Patil for Intervenor

Mr.S.V.Gavand, APP for the State.

CORAM: A.M. BADAR, J.
DATED: 11th JANUARY 2018

PC:-

1. This is second bail application by applicant Abhimanyu Shinde for seeking bail in Crime No.200 of 2015 registered

with Vadgaon Maval Police Station at the instance of informant Sonu @ Yogesh Dnyaneshwar Valunj for the offences punishable under Sections 302, 120(B), 143, 147, 148, 149 of the Indian Penal Code and under Sections 3 (25) (27) of Arms Act, so also under Section 135 of Maharashtra Police Act.

2. The application is placed before this Court in view of order dated 12th December 2017 passed by the coordinate Bench of this Court (Coram: A.S. Gadkari, J) in view of the fact that earlier bail application of the present applicant was rejected by this Court.

3. Heard the learned advocate appearing for the applicant/accused. He drew my attention to the order dated 17.10.2016 passed in Criminal Bail Application No.1194 of 2016 filed by applicant Mukesh @ Mukanda Hiranman Shinde by this Court (Coram: Smt. Sadhana S.Jadhav, J), Order dated 3.2.2017 passed by coordinate Bench of this Court

(Coram: Mrs. Mridula Bhatkar, J) in Criminal Bail Application No.2322 of 2016 and 2390 of 2016 releasing the co-accused Akshay Sanjay Shinde and Rushinath Vitthal Shinde on bail, the order dated 31.10.2017 passed by the coordinate Bench of this court (Coram: A.S. Gadkari, J) in Criminal Bail Application No.490 of 2017 and 774 of 2017 releasing the applicants co-accused Dhanesh @ Chocolate Dilip Shinde and Balu Shantaram Shinde as well as the order dated 9.03.2017 passed by the learned Additional Sessions Judge, Pune below Exh.84 in Sessions Case No. 98 of 2016 releasing the co-accused Raju Prakash Shinde on bail. With these orders releasing co-accused on bail, the learned advocate for the applicant submitted that statements of Ranjit Modhalalji Gadiya and Rajkumar Uttamchand Chopda recorded on 4.8.2015 coupled with the FIR on the same day shows that the present applicant did not chase the deceased. The learned advocate further placed reliance on statement of Mahesh Namdeo Malpote recorded on 5.8.2015 to show that subsequently the prosecution has developed the story that the

deceased was chased by main accused Shekhar. The learned advocate further argued that even the statement of Mahesh does not show that the present applicant had chased the deceased. Reliance is placed on judgment of Hon'ble Madhya Pradesh High Court in the matter of *Vishnu Maheshwari V. State of Madhya Pradesh reported in 1999 Cri.L.J.4403* to buttress the contention that even the co-accused with identical role are released on bail then on the ground of parity the applicant also deserves to be released on bail.

4. I have heard the learned APP as well as the learned advocate appearing for the intervenor. They both opposed the application. The learned APP drew my attention to the observations of the co-ordinate Bench of this court (Coram : Smt. Sadhna S. Jadhav, J) while deciding Criminal Bail Application No.1194 of 2016 filed by Mukesh @ Mukanda Hiranman Shinde to demonstrate the present applicant is not entitled for bail.

5. I have carefully considered the rival submissions and also perused the chargesheet.

6. According to the prosecution case, Mangesh Valunj (since deceased) was the Taluka Head of Maharashtra Navnirman Sena. Other political faction in the village Kamshet was headed by Shinde family. Gram Panchayat elections were scheduled at village Kamshet on 4.8.2015. Deceased Mangesh @ Banti alongwith his supporter was visiting several poll booth for supervising performance of his group in the said election. According to the prosecution case after his visit to election booth at Nehru Vidyalaya he returned and found that his parked vehicle was obstructed by parking several vehicles. His supporters then tried to remove the vehicles that had obstructed vehicle of deceased Mangesh @ Banti at that time. It is the case of the prosecution that main accused Shekhar, present applicant and other accused

encircled Mangesh @ Banti and main accused Shekhar fired a bullet from the firearm held by him.

7. Earlier bail application of the present applicant was rejected by this Court with the following observations in para No.4 of the said order dated 1st July 2016 passed in Criminal Bail application No.667 of 2016.

"Prima facie, it is, therefore, seen that each of their member is liable for criminal act done by the other members is liable for criminal act done by the other members of the unlawful assembly. In the case in hand, the applicant is stated to be one of the members, who surrounded the deceased in order to prevent him from proceeding in any action.

8. In other words, this Court while rejecting the earlier bail application followed the law laid down by the Hon'ble Apex Court in the matter of *Masalti Vs. State of U.P reported in 1965 AIR 202*, wherein judgement in the matter of *Baladin and others Vs. State of UP reported in AIR 56 SC 181* was followed and it was reiterated that it would not be correct to say that before a person is hold to be a member of

an unlawful assembly, it must be show that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly.

9. Subsequent to rejection of the bail application of present applicant, co-accused filed several bail applications before this Court as well as before the Trial Court. They are granted bail by orders which are referred to in the earlier paragraph. However, while deciding the Criminal Bail Application No.1194 of 2016 filed by Mukesh @ Mukanda Hiranman Shinde, co-accused in the instant case, even coordinate Bench of this Court (Coram: Smt. Sadhana S.Jadhav, J) has held thus in para No.9 of the said order :-

" Today this Court has perused the statement of witnesses. They have categorically disclosed to the police on the very next date that when Mangesh in the course of fleeing from the spot to rescue himself, Abhimanyu Shinde had chased the deceased. This act of chasing the deceased by itself would be sufficient to infer that Abhimanyu had shared common intention with the accused Shekhar Shinde."

10. In the case in hand, the prosecution is alleging formation of unlawful assembly with common object to eliminate Mangesh @ Banti. The earlier bail application was decided on merit. Now again this court can not enter into merits to hold that earlier findings given by this Court are incorrect. In this sense, release of the co-accused on bail by coordinate Benches of this court is of no avail to the present applicant. Merely on the ground of parity, the bail cannot be claimed. Judgment in the matter of Vishnu Maheshwari V.State of Madhya Pradesh supra is as such cannot be made applicable to the case in hand.

11. It is further averred that the instant bail application is being opposed merely because of political reasons. According to the applicant he is a member of the gram panchayat and he would be disqualified if he is not released on bail therefore, the application is being opposed by the intervenor. This

reason is extraneous to the consideration on which the application is required to be decided. In the result no case for bail is made out. The application is therefore rejected.

12. In view of disposal of this application, application therein bearing No.1201 of 2017 also stands disposed of.

(A.M. BADAR, J)