

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

CRIMINAL BAIL APPLICATION NO.349 OF 2019

Nityanand Ganpat Yadav	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Tapan Thatte, Advocate for the Applicant.
Mr.R.M. Pethe, APP for the Respondent – State.
Mr.Amit Bhosale, PSI, DCB CID, Property Cell, present.

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**CORAM : PRAKASH D. NAIK, J.
(CHAMBER MATTER)**

DATED : APRIL 2, 2019.

P.C. :

This is third application for bail in connection with C.R.No.453 of 2015, registered with Wadala TT Police Station, Mumbai, filed at the instance of Abhilesh Bhadula on 11th September, 2015. The offence is registered under Section 302 of Indian Penal Code.

2 It is the prosecution case that there was a rivalry between the applicant and the deceased and at the instance of the applicant the deceased was murdered. It is alleged that on 10th February, 2015, the informant went to meet Arjun @ Munna

Jaiswal, Dinesh @ Sunny Chavan was also present. While the informant was passing from MHADA Transit Camp, Dinesh @ Sunny came behind them and by revolver shot at Munna Jaiswal. Munna was taken to the hospital where he was declared dead. Offence was registered under Sections 302 and 120B of IPC. The prosecution relied upon the statement of Milind More which implicates the applicant. As per the statement of Milind More, which was recorded on 7th September, 2015, the applicant and accused no.1 were frequently meeting each other. It is further stated that the applicant accused was asking the accused no.1 as to whether he will do work of Munna Jaiswal. From the conversation which was going on between both of them, the witness realized that the applicant had planned to liquidate the deceased. Thereafter, the deceased was killed. The applicant had preferred an application for bail before the Sessions Court which was rejected. Thereafter, he had preferred an application before this Court viz. Bail Application No.503 of 2016, which was allowed to be withdrawn on 17th November, 2016.

3 The first bail application was withdrawn on 17th November, 2016. Second bail application viz. Criminal Bail Application No.956 of 2017, was rejected by this Court vide order dated 28th June, 2017.

4 Learned advocate for the applicant submitted that the present application is being preferred in view of change in circumstances. While rejecting earlier application, this Court has taken into consideration the statement of witness Milind More. It is submitted that the trial had commenced and the evidence of the said witness is being adduced before the trial Court. The aforesaid witnesses have not supported the prosecution case, and, has been declared hostile. Evidence of another witness P.W.20 is hear say evidence, which is apparent from the nature of his deposition. It is submitted that considering the evidence, which is adduced before the trial Court it can be seen that there is no evidence against the applicant. Hence, in the absence of cogent evidence, the applicant may not be subjected to further detention and he may be enlarged on bail. Learned counsel placed reliance on the decision of Supreme Court in the case of ***Hussain and Another Vs. Union of India***¹. Attention was drawn to the observations in paragraph no.29.1.4, wherein it is observed that as a supplement to Section 436-A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded, such undertrial must be released on

1 2017(5) SC Cases 702

personal bond. Such an assessment must be made by the trial Courts concerned from time to time. Relying upon the said observations, it was submitted that the Court has to take mitigating circumstances into consideration that inspite of examining the witnesses, prosecution is not been able to adduce any substantial evidence against the applicant. Learned counsel also relied upon another decision of the ***Delhi High Court in the case of Kapil Dev Vs. State***². Learned counsel relied upon the observations of the Court in paragraph no.10 of the said decision, wherein it was observed that the second application for bail can be entertained if there is a change in the fact situation, which requires the earlier view being interfered with.

5 Learned APP, on instructions, submitted that the prosecution has so far examined about 25 witnesses. One witness is yet to be examined. The next date before the trial Court is 3rd April, 2019. The prosecution proposes to examine the last witness tomorrow 3rd April, 2019, if convenient to the trial Court. It is submitted that apart from the evidence of P.W.9, the prosecution is also relying upon the evidence of other witnesses. The evidence, which is adduced before the trial Court supports the

2 2005(6)AD (Del) 248

prosecution case. It is submitted that since the evidence will be concluded shortly, the trial Court would proceed with the trial and it would be concluded soon. Learned counsel for the applicant, however, submits that the co-accused proposes to examine defence witness and it would take some more time to conclude the trial. In the light of the aforesaid submission, applicant be granted bail.

6 Having heard both the sides. It is noted that the first application for bail was withdrawn and the second application for bail was rejected by this Court by assigning reasons. Prosecution has examined about 25 witnesses. The next date before the trial Court for adducing evidence is 3rd April, 2019, and it is expected that the Court would proceed with the trial and would conclude the same within short span of time. The appreciation of evidence would be considered by the trial Court while deciding the case. In the circumstances, no case for grant of bail is made out. Hence, application is rejected.

(PRAKASH D. NAIK, J.)