

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.958 OF 2019

Vishal Baban Shinde & Ors.] ... Applicants

Versus

The State of Maharashtra] ... Respondent

WITH
CRIMINAL APPLICATION NO.723 OF 2019
IN
CRIMINAL BAIL APPLICATION NO.958 OF 2019

Santosh Vishwamber Mane] ... Intervener/
Orig. Complainant

IN THE MATTER BETWEEN

Vishal Baban Shinde & Ors.] ... Applicants

Versus

The State of Maharashtra] ... Respondent

Mr. V.V. Purwant, Advocate for the Applicants.
Ms. S.S. Kaushik, APP for the State/Respondent.
None for the Intervener.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 5th AUGUST, 2019.

P. C. :-

1. The applicants are seeking their release on bail in connection

with C.R.No.254/2018 registered at Kurduwadi Police Station, District Solapur u/sec.302, 504, 506, 143, 147, 148, 427 r/w 149 and 120 B of I.P.C. and u/sec.4 r/w 25 of the Indian Arms Act.

2. The FIR is lodged by one Santosh Mane on 17/06/2018 in respect of the incident of the same date which had taken place around 1 o'clock in the afternoon. The incident was in respect of the murder of the informant's relative Vicky Gaikwad. He has stated in his FIR that, Vicky was on bail in connection with a case. He was directed to give attendance to Kurduwadi Police Station on every Sunday, Tuesday and Friday. On 17/06/2018, Vicky had given attendance to Kurduwadi Police Station and thereafter, had gone to meet his relative Jayashree Mane. At that time, the first informant and one Ashish Rajput met him. They were going towards Solapur along with their other friends. On the way, they saw about 20 to 22 persons talking with each other near the house of one Manik Shrirame. About 10 persons were named who were having conversation along with 10 to 12 unknown persons. The first informant, Vicky, Ashish Rajput and others started to go towards Solapur in their car. While they had crossed the toll plaza, suddenly 10 to 12 motorcyclists intercepted

their car. The first informant had named accused Vinod Sonawane, Manik Shrirame, Suraj Jagtap, Anand Sonawane, Subhash Jagtap and Akash Rajge with weapons like sickles, swords and other sharp weapons. The informant has stated in his FIR that, they were accompanied by 10 to 12 other persons. They attacked the car. Vicky tried to ran away from there. He was chased by all the accused. He was assaulted with sharp weapons and with stones. He fell down on the spot. The informant and others could not intervene because the accused were more in numbers and were carrying deadly weapons. After committing Vicky's murder the accused left the spot on their motorcycle. While going, they threatened the first informant and other witnesses. On this basis, the FIR is lodged.

3. The investigation was carried out. During investigation, statements of eye witnesses were recorded u/sec. 161 of Cr. P.C. as well as u/sec. 164 of Cr. P.C.. Supplementary statements of some of the witnesses were also recorded. The accused were arrested and from some of the accused recovery of weapons and other incriminating articles was effected.

4. Applicant No.1 and 2 were arrested on 11/10/2018 and Applicant No.3 was arrested on 28/11/2018. Since then the applicants are in custody. The investigation is over and the charge-sheet is filed.

5. Heard Mr. V.V. Purwant, Ld. Counsel for the Applicants and Ms.S.S. Kaushik, Ld. APP for the State/Respondent.

6. Mr. Purwant submitted that, the applicants are not named either in the FIR or in the statements of the eye witnesses. Even in the statement of the first informant recorded u/sec. 164 of Cr. P.C., the applicants are not named. Only in the supplementary statement recorded much belatedly and recorded after about two months from recording the statement u/sec. 164 of Cr. P.C., on 21/08/2018, for the first time, the names of the present Applicant Nos.1 and 2 were mentioned. That statement did not mention the name of the Applicant No.3. Apart from that statement, there is absolutely no material against any of the applicants.

7. Ld. APP submitted that, at this stage supplementary statement of the first informant was sufficient to show the role played by the applicants.

8. I have considered these submissions. With the assistance of both the Ld. Counsel, I have gone through the entire charge-sheet.

9. The FIR given by Santosh Mane is corroborated by three eye witnesses Ashish Rajput, Rajat Dhaeeje and Varun Dhaeeje. All of them have narrated the same story as is mentioned in the FIR. All these eye witnesses have named some of the accused and they have stated that, they were accompanied by 10 to 12 other unknown persons. None of these eye witnesses has named the present applicants in the statements recorded u/sec. 161 of Cr. P.C. or in the statement recorded u/sec. 164 of Cr. P.C. Even after arrest of all these applicants, they were not put in any test identification parade to enable the eye witnesses to identify the suspects including the present applicants. The only evidence against Applicant Nos.1 and 2 is the supplementary statement of the informant which is recorded on 21/08/2018. It is important to note that, in his statement recorded u/sec. 164 of Cr. P.C., the first informant has not named any of the applicants. The statement u/sec. 164 of Cr. P.C. is recorded on 27/06/2018. By this time, he had sufficient time to recollect names of the applicants. According to him, he was knowing the assailants. He

has named only some of the accused. He has stated that, their car was intercepted by about 20 to 25 persons. In that statement recorded u/sec. 164 of Cr. P.C., the first informant has named other accused but not the applicants.

10. In his supplementary statement dated 21/08/2018, the informant has come up with a case that he was scared when he had lodged this FIR and therefore he had not given names of 10 to 12 unknown persons. Thereafter, he has stated that, he was sure that there were five other assailants namely Vishal Baban Shinde, Gagan Valmiki, Sagar Kapur, Appa Dhavale and Mahadev Gaikwad. According to him, they were present along with the main assailants and had participated in the commission of offence. He does not name Applicant No.3 even at this stage.

11. The informant's supplementary statement is recorded after more than two months of his FIR. In the meantime, his statement u/sec. 164 of Cr. P.C. was recorded on 27/06/2018. By that time, he had sufficient time to recollect names of the applicant and even then he has not named any of the applicants. It is only in his supplementary statement that, he suddenly mentioned the applicants' names as an

after thought. Thus, this is a very weak piece of evidence against the present applicants. Applicant No.3 is not named even in the supplementary statement. None of the other eye witnesses have named these applicants. There is no incriminating evidence in the form of recovery. In this view of the matter, I am inclined to grant bail to the applicants. Hence, the following order.

ORDER

1. The Applicants are directed to be released on bail in connection with C.R.No.254/2018 registered at Kurduwadi Police Station, District Solapur, on their furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or two sureties each in the like amount.
2. Application stands disposed of accordingly.
3. Intervention Application No.723/2019 also stands disposed of.

(SARANG V. KOTWAL, J.)