

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

CRIMINAL BAIL APPLICATION NO. 2964 OF 2018

Pankaj Shivaji Tate ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Shirish Gupte, Senior Counsel I/by Vikas Shivarkar for Applicant.
Ms. Rutuja Ambekar, APP for Respondent – State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 5, 2019.

P.C. :

. The Applicant is seeking regular bail in Crime No. 157 of 2017 for an offence punishable under Sections 302, 201, 120-B, 341, 143, 147, 148, 149 of the Indian Penal Code, Sections 3 (25) and 4 (25) of the Arms Act and Section 135 of Maharashtra Police Act.

2. On 27th April 2017 Parmeshwar @ Vikas Tatyarao Kamble - the driver of deceased Balasaheb Shankar Ghule lodged a complaint alleging that Accused Milind Kiwale and Rahul Kiwale along with other seven co-accused murdered Balasaheb Ghule over rivalry in the business. The said complainant Parmeshwar is an eye-witness to the incident.

3. Mr. Gupte, the learned Senior Counsel while trying to make out a case for grant of bail would urge that Applicant was arrested on 30th April 2017 and in Identification Parade held on 29th June 2017 Applicant was identified by the complainant. According to the learned Counsel in the complaint so also in the supplementary statement no specific role or active participation in the crime is alleged against the Applicant. He would then urge that issue of Identification Parade is already looked into by this Court while dealing with Bail Application of co-accused Sunil Shelar and Vishal Dhaware. Having noticed that there was technical flaw, this Court ordered release of the said co-accused Sunil and Vishal on 13th December 2017. Similar appears to be a case of Santosh Jadhav who claimed to have provided weapon which is used in the commission of crime.

4. Apart from the parity submissions are that in absence of any overtact, it will not be justifiable to continue the detention of the Applicant. As such a prayer is made for grant of bail.

5. The learned APP would try to differentiate the case of the Applicant with that of the other co-accused namely, Sunil Shelar and Vishal Dhaware who were ordered to be released on the count of seizure of blood stained clothes and discovery of weapon at the behest of

Applicant. According to her, in view of identification of the Applicant by the complainant in Identification Parade, discovery of blood stained clothes under Section 27 of the Evidence Act, the Application of the Applicant cannot be treated at par with the other co-accused and as such sought rejection of bail based on the statement of eye-witnesses.

6. Considered rival submissions.

7. The order of release of co-accused passed on 13th December 2017 in favour of Sunil Shelar and Vishal Dhaware is not questioned by the prosecution side and as such has attained finality. Larger role is attributed to the said accused persons than that of the present Applicant as it is claimed by the prosecution that they have destroyed their clothes which they were wearing at the time of commission of crime.

8. In the aforesaid background, if the case of the prosecution is appreciated it appears that the said accused persons namely, Sunil and Vishal were also identified in the Identification Parade. The role attributed to the Applicant appears to be at par with the said accused persons and this Court has already ordered their release.

9. That being so, in view of order of release passed in favour of Accused Sunil Shelar and Vishal Dhaware, in my opinion, the Applicant

also deserves to be released on bail. Hence, the following order is passed.

ORDER

- (A) The Applicant be released on bail in Crime No. 157 of 2017 for an offence punishable under Sections 302, 201, 120-B, 341, 143, 147, 148, 149 of the Indian Penal Code, Sections 3 (25) and 4 (25) of the Arms Act and Section 135 of Maharashtra Police Act on executing PR Bond of Rs.25,000/- with one or more sureties in the like amount.
- (B) The Applicant shall neither tamper the evidence of prosecution nor influence the prosecution witnesses.
- (C) Till conclusion of trial the Applicant shall keep himself away from the jurisdiction of the court but for attending the trial.
- (D) If the Applicant is found involved in similar type of offence, prosecution will be at liberty to move for cancellation of bail.

10. Criminal Bail Application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)