

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPPLICATION NO.3323 OF 2018

1. Shubham Shriram Bhagat, Age 29 years,
2. Omkar Shriram Bhagat, Age 21 years,
Both R/o.4, Sangita Dhara Bungalow,
Ayare, Dombivali (E), Tal.Kalyan.
(Presently lodged at Adharwadi Jail, Kalyan)

Applicants

versus

The State of Maharashtra

Respondent

Mr.Saurabh Butala with Sonam Bhojne I/by Sonam Singh for
applicants.

Mr.R.M.Pethe, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th January 2019

PC :

1. The applicants are seeking bail in CR No.I-138 of 2017 registered with Dombivali Police Station. The FIR was registered on 30th May 2017 for offences under Sections 302, 143, 147, 148, 149, 342, 323, 504, 506 read with Section 34 of Indian Penal Code and Sections 3, 25, 27 and 30 of Indian Arms Act.

2. The applicants were arrested on 2nd June 2017. The investigation is complete and charge sheet is filed. The prosecution case is that the informant used to carry out constructions work with the help of his brother. He owns a chawl and receives rent from the same. There is an old dilapidated house of co-accused Shriram Bhagat in front of the house of informant. On 28th December 2017, Shriram Bhagat cut down two trees and wood thereof was thrown in front of the house of informant, which created hurdle for him and his

family members. The younger brother of the informant Vikrant questioned about the same. He was abused and threatened by accused Shriram Bhagat, Mangesh Bhagat, Omkar Bhagat (applicant herein), Pankaj Mhatre and Pradip Naidu. It is further alleged that on 30th May 2017, the younger brother of informant Vikrant and his friends had taken his mother to hospital since she was not keeping well. They returned about at 12.30 p.m.. It was noticed that the accused Shriram Bhagat had parked JCB machine in front of house of informant on road, which created hurdle in their way. As such, the brother of informant asked the accused to remove the JCB machine. However, he was threatened by accused. At about 2 p.m on the same day, while complainant was having his lunch at his home with family members and friends, the accused Shriram Bhagat gave alarm to Vikrant. As such, the informant and others came down, wherein other accused had gathered. The accused Pankaj Mhatre was found armed with single barrel gun. The informant and Vikrant asked the accused Shriram Bhagat to take aside the JCB, which he refused to do so. Thereafter the accused persons encircled the complainant and his associates and gave alarm to kill. Accordingly Shriram Bhagat took out revolver from his waist and gave it to Mangesh and asked him to kill Vikrant. While complainant and his family members were attempting to save deceased, co-accused Mangesh fired by revolver at Vikrant, who suffered bleeding from abdomen and fell down. Thereafter the accused persons fled away in the four vehicles parked in front of the house of complainant. The injured was admitted in hospital who later on succumbed to death. On the basis of these allegations, the FIR was registered for the aforesaid offences. The applicants were arrested. Other accused were also arrested. Since the date of arrest they are in custody.

3. Learned counsel appearing for applicants submitted that further detention of applicants is not necessary. It is submitted that as per the prosecution case, several accused were present at the spot of incident. No overt act of assault is attributed to the applicants. It is further submitted that the co-accused had allegedly taken out revolver from his waist and the same was handed over to the other accused, who shot at the deceased. He has sustained single fire injury. The other injuries were abrasions. Learned counsel drew my attention to the post mortem report and pointed out the nature of injuries sustained by the deceased. He also took me through statements of purported eye witnesses, whose version is similar and it is alleged that the applicants were present at the scene of offence and they along with other accused had encircled the injured/victim, which was followed by the incident of firing by revolver at the deceased. Learned counsel also pointed out that two other persons namely Indumati Chaudhary and Sangeeta Bhagat were also purportedly standing at the scene of offence and one of them being attributed the role of slapping one of the witness, had preferred application for anticipatory bail before this Court, which was allowed vide order dated 31st January 2018. It is submitted that vis-a-vis role attributed to the said accused and the present applicants, there cannot be any distinction. The applicants are in custody for more than a year.

4. Learned counsel for applicants states that the co-accused namely Sumit Chaudhari and Swapnil Chaudhari who were attributed with similar role, have been granted bail in Bail Application No.1524 of 2018 vide order dated 17th September 2018.

The other accused namely Prashant Pawar and Shashikant @ Sashi Kulye were granted bail in Bail Application No.2684 of 2018 vide order dated 30th November 2018.

5. In view of the above, the applicants are entitled for being released on bail. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3323 of 2018 is allowed and disposed off;
- (ii) The applicants are directed to be released on bail in connection with CR No.I-138 of 2017 registered with Dombivali Police Station on furnishing PR bonds in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall not tamper with evidence;
- (iv) The applicants shall report Dombivali Police Station once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (v) The applicants shall attend every date of hearing regularly before the Trial Court, unless exempted by Trial Court;
- (vi) The Trial Court shall not be influenced by the observations in this order during the trial.

(PRAKASH D. NAIK, J.)

MST