

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

CRIMINAL BAIL APPLICATION NO. 1422 OF 2019

Sachin Nanasaheb Shinde

...Applicant

V/s

The State of Maharashtra

...Respondent

Mr. M. S. Mohite i/b. Bhalchandra S. Shinde for the applicant.
Mr. S. H. Yadav APP for the State/Respondent.

**CORAM : PRAKASH D. NAIK, J.
DATE : 7TH JANUARY, 2020.**

PC :

1. The applicant is arrested on 9th January, 2019 in connection with CR. No. 563 of 2018 registered with Shikrapur Police Station, Pune, for offences punishable under Sections 302, 120(B), 34 of Indian Penal Code, 1860 ('IPC' for short).

2. The First Information Report ('FIR' for short) is lodged by Smt. Baby Gone. Her son Ram Gone left house at about 11.30 pm on 11.09.2018. Ram Gone was assaulted by some persons. At about 4.00 a.m. Police visited the house of the complainant and informed her that her son Ram Gone was killed by unknown persons. The complainant visited Police Station, alongwith her relatives. The complainant identified body of deceased. There were injuries on his body. FIR was lodged on 12.09.2018 against unknown persons.

3. In pursuant to registration of the FIR the investigation proceeded. The statement of various witnesses were recorded. Supplementary statement of the complainant was recorded. The applicant and other accused were arrested. On completing investigation charge-sheet was filed.

4. The applicant had preferred an application for bail before the Sessions Court, which was rejected by order dated 20.04.2019.

5. Learned counsel for the applicant pointed out the statement of witnesses recorded during the course of investigation. It is submitted that there is no cogent evidence against the applicant showing his complicity in crime. Undisputedly, the applicant was not the assailant. His name was not mentioned in FIR. It is submitted that the statements relating to the enmity or motive attributed to the applicant were recorded belatedly. There is no eye witness to the incident. There is no evidence corroborating the involvement of the applicant. There is no substantive evidence to support the charge of conspiracy.

6. It is further submitted that, admittedly, the applicant was out of state on the date of incident, which is fortified by the statement of

witness. The alleged incident of recovery of pistol and forcing the deceased to take over criminal liability had allegedly occurred one year ago and not proximate to the crime. There are no supporting documents to the said allegation. There is no recovery of pistol from applicant. The applicant has no connection with assault on Aniket Bagade. The alleged motive is based on improvised version of conspiracy. It is submitted that the applicant was accompanied by cousin of the deceased. It is submitted that the prosecution had relied upon the antecedents of the applicant. Out of five cases, the applicant has been acquitted in two cases. It is further submitted that in three cases registered against the applicant, the deceased was co-accused. The prosecution has not brought on record any cogent evidence to substantiate motive to the applicant to commit murder of Ram Gone.

7. Per contra, learned APP submitted that the applicant is habitual offender. Five cases were registered against him. The supplementary statement of the complainant refers to involvement of the applicant. It is further submitted that the statement of witness Aniket Bagade refers to incident of assaulting him by the co-accused. The assault upon Aniket Bagade was followed by the assault on deceased. The co-accused were acting at the instance of the applicant. While in custody the statement of applicant was recorded under Section 27 of the Indian Evidence Act, in which he has pointed the premises where the

conspiracy was hatched. He further submitted that the prosecution is relying upon the CDR. On 08.09.2018 there were calls between applicant no. 1 and 2. Similarly, on 09.09.2018 and on 10.09.2018 there were calls between the applicant and the other accused. It is further submitted that the applicant is having criminal background. He had enmity with deceased. It is submitted that in the past, 'Pistol' was recovered from the applicant. He wanted deceased to take responsibility of having in possession of the said 'Pistol', which was turned down by the deceased and hence their relationship was strained. It is submitted that the applicant had participated in settling the dispute with the injured person Aniket, which show his involvement in crime. Hence, bail may be refused.

8. I have perused the material on record. There is no eye witness to the incident. The FIR was lodged by mother of the deceased against unknown persons. Her supplementary statement was recorded on 19.09.2018. In that statement, complainant has stated that deceased was friend of applicant. One year ago, Pistol was recovered from applicant. According to applicant deceased should have take over the case upon him. However, Ram had declined the request. Father of applicant had threatened the complainants family. Since then applicant had grudge against Ram. She further stated that on 05.09.2018 Aniket Bagade was assaulted by some persons. While

assaulting him, the assailants had stated that the applicant is the leader of Nagar Road. She has stated that the said information was provided to her by Aniket Bagade. Nikhil Patil had enquired about Ram with watchman of society. Since the assailants saw Aniket, he was assaulted. Ram and Aniket had gone to Police Station to lodge complaint. Complainant then stated that, on 06.09.2018 Ram Gone and Aniket were supposed to visit Police Station for lodging complaint. However, Mauli Kolte and his brother had visited house of Aniket to resolve dispute. Ram and complainant had visited house of Aniket. At that time Mauli Kolte had stated that Nikhil Patil and his friends had planned to assault Ram Gone and not Aniket. At that time Ram had challenged them. Applicant was waiting outside society near house of uncle of Aniket. In the afternoon, Ram, Aniket, Nikhil, applicant and others had visited house of Mauli Kolte to settle the differences. In view of settlement, complaint was not lodged. Two days thereafter Ram had informed that, applicant is coming to meet him. But he did not come. Ram had told her that applicant would assault him in two/three days. All these facts had appeared in the supplementary statement, recorded after seven days. While lodging FIR there was no suspicion against applicant. The statement would also indicate that applicant had participated in resolving dispute. The motive attributed is in respect of alleged incident occurred one year ago. There is no material to show that pistol was

recovered from applicant. Statement of Aniket Bagade was recorded on 12.09.2018. He has referred to assault on 05.09.2018. He has not referred to name of applicant. The statement of complainant with regards to reference of name of applicant is contradictory to statement of Aniket. The supplementary statement was recorded on 20.09.2018. In the said statement he has stated that on 06.09.2019, some persons had visited him for settling dispute. In view of the settlement he did not lodge complaint with the police. He further stated that at about 10.30 p.m. some persons including Nikhil Patil and the applicant had visited house of Mauli Kolte for settling dispute. He also stated that, one year ago the deceased had refused to accept the liability of admitting the offence committed by the applicant and there was dispute between them regarding recovery of Pistol. This is improvised version of the witness.

9. There is no reference of the said dispute in the previous statement of Aniket Bagade. He has also not referred the presence of the applicant and settling the dispute in his first statement. During the course of investigation, the statement of one Suraj Tikhe was recorded. In the said statement it is disclosed that the applicant and others had gone for Balaji Darshan. The applicant was accompanied by Rahul Balkate. He appears to be cousin of deceased as spelt out in statement of Laxmi Balkate. Admittedly, on the date of incident the

applicant was not at place of incident.. The applicant learnt about the incident on 12.09.2018. Learned counsel for the applicant submitted that two cases registered vide CR. No. 164/2011, 151/2012 had resulted in acquittal. It is also submitted that the deceased was the co-accused alongwith the applicant in CR. No. 164/2011, 151/2012 and 129/2015. The prosecution was also relying upon the CDR record. Apparently, the co-accused and the applicant were acquainted with each other and assuming that there are calls between the co-accused and the applicant, it cannot be inferred that the applicant was instrumental in committing murder. There is no evidence of conspiracy. Taking into consideration, the nature of evidence collected against the applicant, further detention of the applicant is not called for. He is in custody from 19.01.2019. Hence, case for grant of bail is made out.

10x. Hence, I pass the following order:

ORDER

- (i) Bail Application No. 1422 of 2019, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 563 of 2018, registered with Shikrapur Police Station, Pune, on his furnishing P.R. Bond in the sum of Rs. 25,000/-, with one or more sureties in the like amount;

- (iii) The applicants shall report the concerned Police Station, once in a month on first Saturday of every month between 11:00 a.m. to 1:00 noon till further order;
- (iv) The applicant shall not tamper with the evidence;
- (iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)