

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.930 OF 2019

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Sachin Deepak Gaikwad .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Shirish Gupte, Sr. counsel i/b Mr. Vikash Shivarkar for the Applicant.

Mr. Suraj S. Hulke A.P.P. for the State.

CORAM: SMT. BHARATI DANGRE, J.

DATED : 24th SEPTEMBER 2020.

P.C:-

1. Claiming parity with the co-accused Pankaj Tate, Sunil Shelar and Vishal Dhawre, learned senior counsel would press for his release on bail. The Applicant has been arraigned as an accused in Crime No.157 of 2017 and later charge-sheeted for the offences punishable under Sections 302, 201, 120-B, 143, 147, 148, 149 of the IPC, Sections 3(25) and 4(25) of the Arms Act.

AJN

2. The investigating machinery was set into motion on a complaint being filed by one Parmeshwar @ Vikas Kamble, who reported that on 27/04/2017 there was an assault by accused Milind Kiwale and Rahul Kiwale on the deceased Balasaheb Ghule on account of rivalry in business. Five persons were named in the FIR with specific overt acts being attributed which resulted into death of Balasaheb Ghule. Five unknown persons are mentioned in the FIR. Pertinent to note that the complainant is the eye-witness. The Applicant is said to be one of the assailants in the five unknown persons mentioned in the FIR.

3. Mr. Gupte, learned senior counsel relies on the order passed by this Court in case of co-accused in two bail Applications; first being Bail Application No.2964 of 2018 in the case of Pankaj Shivaji Tate by (Hon'ble Justice Nitin Sambre) on 05/02/2019 and another order in case of two accused being passed in Bail Application Nos.2291 of 2017 and 2326 of 2017 in the cases of Sunil Shelar and Vishal Dhavare on 13/12/2017 (Hon'ble Smt. Justice Sadhana Jadhav).

4. After taking into consideration the case of the prosecution, it can be seen that in the incident, five unknown persons armed with sickle participated and they mounted assault on Balasaheb Ghule. The Applicant came to be arrested on 30/04/2017. On being asked as to what is the basis for connecting the present

Applicant to the crime and to be one of the five persons named in the FIR, learned counsel states that the Applicant has been identified in the Test Identification Parade.

5. Mr. Gupte, learned senior counsel relied upon the order dated 13/12/2017 passed by Smt. Justice Sadhana Jadhav where it is recorded that the procedure for conduct of the Test Identification Parade has not been followed as per the Criminal Manual. Learned counsel would submit that apart from this fact, the most important aspect is that the Test Identification Parade was conducted on 29/06/2017, approximately after lapse of about two months, which is not as per law. Moreover the supplementary statement of the complainant Parmeshwar came to be recorded on 12/02/2018, much after the date of the incident and conduct of the Test Identification Parade. The supplementary statement also do not attribute any specific role or do not show participation of the Applicant in the entire episode. There is no recovery at the instance of the Applicant barring the recovery of blood stained clothes. Since no incriminating articles in the form of any weapon has been recovered from the Applicant Mr. Gupte is perfectly justified in relying upon the order passed in the case of co-accused. He would stand on the same footing of the three co-accused who have been granted bail and who were also alleged to be the ones in the five unknown persons mentioned in the FIR. The parity is apparent and the attempt on

an earlier occasion to demonstrate that there was recovery of blood stained clothes had not found favour with the court. There is no reason why the benefit of the order passed in the case of the co-accused shall not be extended to the present Applicant, particularly when the investigation is complete and the charge-sheet is filed and the Applicant is incarcerated since 30/04/2017.

6. Considering the Application for grant of bail, the liberty of the Applicant will have to be balanced against his availability for trial and fair trial to the prosecution. This can be ensured by securing the presence of the Applicant at the time of trial and while imposing stringent conditions. Hence the following order:

ORDER

(a) The Applicant – Mr. Sachin Deepak Gaikwad shall be released on bail in C.R. No.157 of 2017 registered at Haveli Police Station, Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.

(b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court

and shall not tamper with the prosecution evidence.

(c) The Appellant shall co-operate in the conduct of the trial and shall attend the trial court on every date of hearing, unless exempted by the court.

(d) The Applicant shall provide his residential address and mobile number to the Investigating Officer.

7. The Application is allowed in the aforesaid terms.

SMT. BHARATI DANGRE, J.