

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2472 OF 2019

Kiran Mallikarjun Panchakatti	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL BAIL APPLICATION NO.2352 OF 2019

Laxman Kantappa Shinde	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Milind R. Deshpande for applicant in BA No.2472/2019.
Mr.Rushikesh Kale i/by V.VPurwant for applicant in BA
No.2352/2019.
Smt.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th January 2020

PC :

1. The applicants are seeking bail in CR No.2 of 2019 registered with Ratnagiri Rural Police Station for offences under Sections 302 and 34 of Indian Penal Code, under Sections 4 and 25 of Arms Act and under Sections 37(1), (A), (3) and 135 of Maharashtra Police Act.

2. The prosecution case is that the complaint was lodged by Dattatraya Balbhim Kshetri alleging that accused (applicant in BA No.2472 of 2019) is his nephew. There was a previous quarrel between the deceased and applicant in BA No.2472 of 2019. The deceased had slapped the applicant on 4th January 2019. On 6th January 2019 the complainant was at home along with deceased.

The applicant in BA No.2472 of 2019 was also at home. At about 10 pm, the applicant gave a call to the complainant and informed that he has shot the deceased at the Cement Company at Ratnagiri MIDC. The complainant proceeded to the place. The injured was taken to hospital for treatment. He was found in unconscious condition. He was taken to Chirayu Hospital. He had sustained bullet injury on his head. The FIR was registered. Supplementary statement of the complainant was recorded on 8th January 2019. On completing investigation charge sheet is filed.

3. Learned counsel for applicant in BA No.2472 of 2019 submitted that on account of previous dispute the applicant has been falsely implicated in this case. There is no eye witness to the incident. There is no evidence to show the involvement of applicant in the crime. It is difficult to believe that the applicant had informed the complainant that he has fired a bullet shot at deceased. The applicant and deceased are related to each other. The blood stains were found on the back side of the clothes of applicant. The circumstance is doubtful. It is the case of the prosecution that as the victim was shot at on his head, the blood could have been found on the front side of his clothes. There is improvement in the statement of complainant. In the supplementary statement, he has stated that the son of deceased had informed him that the applicant had taken revolver with him. This fact was not reflected in the FIR. It is also submitted that initially accidental death was reported with Chirayu Hospital and thereafter it was alleged that it was a case of murder.

4. Learned counsel for applicant in BA No.2352 of 2019 submitted that he is not involved in the crime. The memorandum

statement of accused no.1 would indicate that he had shown the place where the pistol was handed over to the said applicant (accused no.2) after commission of crime. The pistol was thereafter recovered from the custody of said applicant. It is submitted that taking the prosecution case as it is, the accused no.2 can be prosecuted u/s 201 of IPC. It is not the case of the prosecution that the said accused was present at the scene of offence when the deceased was shot at allegedly by the co-accused.

5. Learned APP submitted that the CDR record indicates that both the applicants had met each other on the date of incident. There are statements of witnesses which would indicate that the applicant and deceased were together. The statement of the nephew of applicant was recorded who had stated that the applicant took away the revolver with him. The statements of the family members of the deceased mention that there was animosity between applicant and the deceased on account of payment of money. Learned APP submitted that the CDR also indicate tower location of accused no.1 who was at the place of incident at the relevant time. The ballistic opinion was obtained which shows that there was firing from the revolver which was used by the accused. The empty switches were recovered from the scene of offence found to have been fired. The empty switches were found in car. There is recovery of bullet from the head of deceased. The cause of death is fire arm injury to head. Learned APP further submitted that there is extrajudicial confession of accused no.1 to one of the witness whose statement has been recorded.

6. On perusal of the charge sheet it is apparent that

overwhelming evidence is existing against accused no.1 Kiran Panchakatti. He had informed the complainant that he has shot the deceased. He was found present at the place of incident. There is evidence on record to show that he was in company with the deceased. He was in possession of the revolver. The post mortem report, ballistic opinion, extrajudicial confession and several other circumstances show that he was actively involved in the crime. The submissions advanced by learned counsel for applicant cannot be considered at this stage. However, as far as the applicant in BA No.2352 of 2019 is concerned, it is apparent that he was not present at the scene of offence. The case of prosecution apparent from the memorandum of statement of the accused is that he was handed over the revolver which was used in the crime, which was subsequently recovered. In the circumstances, considering the overt act attributed to him, bail can be granted to said accused.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2472 of 2019 is rejected;
- (ii) Criminal Bail Application No.2352 of 2019 is allowed;
- (iii) The applicant Laxman Kantappa Shinde in Bail Application No.2352 of 2019 is directed to be released on bail in connection with CR No.2 of 2019 registered with Ratnagiri Rural Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iv) The applicant Laxman Kantappa Shinde shall attend Ratnagiri Rural Police Station once in a month on every first Saturday between 10 am and 1 pm till conclusion of trial;

(v) The applicant Laxman Kantappa Shinde shall not tamper with prosecution witness and shall attend the Trial Court proceedings regularly, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)

MST