

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.218 OF 2020

SUNNY POPAT PAWAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. Z.H. Farooqui, Advocate h/f Mr. N.V. Gaware, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30th JANUARY, 2021.

ORDER :

1 Present applicant has been arrested, in connection with Crime No.669/2019 dated 12.06.2019 by Shirdi Police Station, Dist. Ahmednagar, for the offence punishable under Section 304, 307 read with Section 34 of the Indian Penal Code and under Section 3 punishable under Section 25 of the Indian Arms Act. He has filed present application for bail under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. Z.H. Farooqui holding for learned Advocate Mr. N.V. Gaware for the applicant and learned APP Mr. S.Y. Mahajan for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant has been arrested on 12.06.2019. He was initially remanded to Police Custody and thereafter he is in Magisterial Custody. After conclusion of the collection of evidence charge sheet has been filed bearing Regular Criminal Case No.312/2019 before Judicial Magistrate First Class, Rahata. However, there is no progress further. The evidence, that is collected against the present applicant, is scanty. There is no direct evidence against him. He had filed application before the learned Additional Sessions Judge earlier, which came to be rejected. However, thereafter co-accused Nitin Wadekar and Samarth Sunil came to be enlarged on regular bail on 24.09.2019. Therefore, applicant had again filed the application at Exh.10 in Sessions Case No.142/2019, but it has been rejected, on the ground that there is no change in the circumstance. Perusal of the First Information Report would show that the present applicant has been falsely implicated. No incriminating material has been recovered at the instance of the applicant. Now, as the charge sheet is also filed, his physical custody is not required, and therefore, he deserves to be released on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that there is ample evidence against the present applicant. The applicant was caught hold of at the spot. FIR has been lodged by a lodge

owner at Shirdi, Tq. Rahata, viz. Govind Lilaram Garud. He had given one room from his Hotel Pavandham to a known person i.e. Nitin Wadekar. He heard sound like a bursting of a cracker, and therefore, he watched the things in CCTV camera. At that time, he found that three boys along with Nitin Wadekar had gone to room No.104 were running. The informant went to the room and found that one boy was lying on the ground and another boy was about to run. When he asked that person, as to what he has done there, at that time, he took out the pistol from his waist and by pointing it out towards informant, he threatened to kill and thereafter the said boy ran away. After calling police when the things were inspected again, it was found that the boy, who was lying on the ground, was shot dead. Statements of witnesses have been recorded. Ballistic report has also come. Statements of witnesses, especially recorded under Section 164 of Cr.P.C., would show that present applicant was having the pistol. So, when there is ample evidence against the applicant, he does not deserve to be released on regular bail.

5 At the outset, it is to be noted that the investigation is complete and charge sheet has been filed. Case has been committed to the Court of Sessions. Now, the evidence, that is collected, is required to be considered. The FIR, the photographs on record, Inquest Panchnama and PM. Report would show that death of Pratik @ Bhaiyya Santosh Wadekar, who was then

17 years of age, is due to bullet injury. The CCTV footages appeared to have been connected. FIR came to be lodged at 01.19 hours on 12.06.2019 i.e. 01.19 a.m. and the present accused came to be arrested at 3.56 a.m. At the time of his arrest, panchnama has been prepared and it shows that a steel pistol having made in USA engrossed on it with one 7.65 mm round of bullets were seized from his person. The bullet shell found at the spot and the pistol, which was seized, appeared to be from the same pistol, as per the ballistic expert's opinion.

6 It has been tried to be submitted on behalf of the applicant that Nitin Wadekar had brought the pistol and the present applicant was handling it and in that process mistakenly there was a fire, which had hit Pratik. In fact, if the applicant wants to raise this defence, then it would be at the time of trial and not at the stage of bail.

7 There are statements of witnesses, who have seen the present applicant with the deceased and co-accused going in room No.104 of the hotel of the informant. Therefore, when substantial evidence is available, discretion cannot be used in favour of the applicant. Application deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)