

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

905 BAIL APPLICATION NO.332 OF 2021

1. SURESH @ PINYA BHARAT KAPSE
2. BAPPA @ BAPU RAOSAHEB VIGHNE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Ghanekar Nilesh S.
APP for Respondents/State : Mr. G.O. Wattamwar
...

CORAM : M.G. SEWLIKAR, J.
DATE : 9th December, 2021

PC.:-

This is an application under Section 439 of the Cr.PC. for releasing the applicants on bail in connection with Crime No.71/2016 registered with Chaklamba Police Station, District Beed under Section 307, 353 read with Section 34 of the I.P.C., under Section 3/25, 3/27 of the Indian Arms Act and under Section 39(1)/192 of the Motor Vehicles Act.

2. Facts in brief are that the applicants are accused of the offences under Section 307, 394 read with Section 3/25 of the Indian Arms Act vide Crime No.65/2016 and under Section 302 read with Section 4/25 of the Indian Arms Act in Crime No.40/2015. Applicants are accused of committing murder of one policeman. In both these crimes both of them are absconding.

3. The police station got the information that accused-Pinya was to visit Shirur or Patoda, therefore police laid the trap. Accused-Pinya was found proceeding on a motorcycle. He was a pillion rider. He was asked to stop but he did not. Therefore, policemen while overtaking the motorcycle dashed against the motorcycle of the accused-Pinya. Accused Pinya and the rider fell down. Police officers went to apprehend them at that time they realised that applicant no.1-Pinya was holding a country made pistol and he fired in the direction of the police. But the police officials managed to evade it. Thereafter, police officers in defence fired at both the accused. Both of them received gun shot injuries. One of them received gun shot injury on the leg and the other one sustained injury on thigh. Accordingly, offence under Section 307 of the I.P.C. came to be registered against both the applicants.

4. Learned counsel Shri Ghanekar submits that the applicants are alleged to have fired from a country made pistol. From the prosecution story, it is evident that none of the police officers sustained any hurt because of the firing from the country made pistol. He submits that, therefore, punishment is under Section 307 with ten years of imprisonment. Applicants have been behind the bars since 08.06.2016. Therefore, in terms of Section 436-A of the Cr.P.C., applicants are entitled to be released on bail.

5. Learned APP Shri Wattamwar submits that applicants have criminal antecedents. So many criminal cases are pending against them. He submits that if applicants are released on bail they are likely to pressurize the witnesses. He further submits that the trial has started. Instead of releasing the applicants on bail, the trial Court can be directed to dispose of the trial within a specified period.

6. Learned counsel Shri Ghanekar in reply submits that in most of the cases the applicants have been acquitted. In other cases they are on bail. He further submits that in terms of Section 436-A of the Cr.P.C., applicants are entitled to be released on bail. Offence in question is not punishable with death or imprisonment for life. He submits that in case of the offence in which hurt is not caused offence is punishable with imprisonment extending up to ten years.

7. On perusal of the record, it appears that the applicants had fired in the direction of the police officer by the name of Police Naik Kendre. The officer ducked because of which the bullet did not hit him. Thus, this clearly goes to show that the Police Naik in whose direction firing was done did not sustain any injury. Therefore, the punishment for the offence will be ten years under Section 307 of the I.P.C.

8. In terms of Section 436-A of the Cr.P.C., if an accused is under trial for more than five years, and if trial does not get concluded, such accused shall be released on his personal bond or on furnishing surety. In the case at hand, admittedly, the applicants have been in jail since 08.06.2016. Therefore, today they have completed more than five and half years behind the bars. Learned APP submits that applicant was in custody in other crime also.

9. On considering submissions of learned counsel Shri Ghanekar and Shri Wattamwar learned APP for the State, it is apparent that the applicants were arrested on 08.06.2016 and till date they are not released on bail which means they are behind the bars for more than five years. Therefore, by invoking provisions of Section 436-A of the Cr.P.C. applicants can be released on bail as they have completed five years of imprisonment as under trial. In this view of the matter, I am inclined to release the applicants on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicants be released on PR bond of Rs.50,000/- each with one solvent surety in the like amount each, in connection with Crime No.71/2016 under Section 307, 353 read with Section 34 of the I.P.C., under Section 3/25, 3/27 of the Indian Arms Act and under Section 39(1)/192 of the Motor Vehicles Act registered with

Chaklamba Police Station, District Beed and on condition that applicants shall stay away from Beed District till the disposal of the trial and they are permitted to enter the district only for attending the dates fixed in the trial. .

- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]