

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

CRIMINAL BAIL APPLICATION NO. 627 OF 2021

Vinayak Vaman Khomane Applicant

Versus

The State of Maharashtra Respondent

Mr. Hrishikesh A. Mundargi a/w Meghdeep M. Oak, for the
applicant.

Mr. H.J. Dedhia, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 4th MARCH, 2021**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.563 of 2018 registered at Phaltan Gramin Police Station, Satara, on 28/12/2018 under sections 307, 326 of the Indian Penal Code and under Section 3, 25, 27 of the Indian Arms Act. The applicant was arrested on 8/3/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Hrishikesh A. Mundargi, learned counsel for the applicant and Mr. H.J. Dedhia, learned APP for the State.

3. The FIR was lodged by one Gulab Uttam Bhandalkar on 28/12/2018. He has stated that on that day, at about 5.00 to 6.00 p.m., he was going towards his house at village Gunvare from Barad. Near Mirawali Peer, he saw Vijay Gawade. One unknown person came from behind him and fired at the first informant. He suffered fire arm injury to his back. On this basis the FIR is lodged.

4. The investigation was carried out and the prosecution case is that, Kalyan Gawade had some dispute with the informant. The present applicant is Kalyan Gawade's uncle. Kalyan Gawade told the applicant about the dispute, who in turn arranged to hire assailants to commit assault on the first informant.

Money was given to the assailants for executing this work. Fire arms were purchased. The prosecution case is that the incident was a result of conspiracy between Kalyan Gawade, present applicant and others. On this basis the charge-sheet was filed.

5. Learned Counsel for the applicant submitted that except inadmissible portion in the memorandum statement recorded under section 27 of the Evidence Act, of co-accused Amar Bedare and Dynaneshwar Sable, there is absolutely no evidence against the present applicant. He emphasised that the said portion in their statement is inadmissible and based on the statement, the applicant cannot be convicted and therefore should not be denied bail. Shri Mundargi relied on the order passed by this Court (Coram:- Smt. Bharati Dangre, J.) in Criminal Bail Application No. 3404 of 2019 dated 7/10/2020, granting bail to co-accused Kalyan Gawade.

6. Learned APP could not point out any other

material than this. He opposed the application on the ground that the offence is serious and the applicant was part of criminal conspiracy.

7. I have considered these submissions. With the assistance of learned Counsel, I have perused entire charge-sheet. The injured had suffered one fire arm injury on the right side of back. The Injured has survived and the offence has not escalated any further. There are other witnesses like Amol Kashid and Sanjay Gavali who had seen the injured at the spot. He was shouting. Within a short time both of them saw a person having covered his face carrying pistol going away on a two wheeler. However, these statements does not take prosecution case any further against the present applicant. Even the identification parade was not held. In any case, it is not prosecution case that the applicant was present at the spot or that he had fired at the injured. Only reference to the applicant's name is mentioned in the statements of co-accused recorded under section 27

of the Evidence Act. Pursuant to the statement given by the co-accused Amar Bedare a pistol was recovered and pursuant to the statement of Dyananeshwar another pistol was recovered. However, the portions mentioning applicant's role in these statement are clearly inadmissible. There is no other evidence against the present applicant.

8. Learned APP also could not point out any other material against the present applicant. In this view of the matter, applicant can be granted bail. The investigation is over and the charge-sheet is filed. He is in custody since 8/3/2020. There is similar evidence against the co-accused to whom the bail is granted by this Court as mentioned earlier. Therefore, on the ground of parity also, applicant deserves to be granted bail. It is made clear that the observations made in this application are restricted to the decision of this application and the trial Court shall not be influenced by these observations while deciding the trial.

9. Hence the following order.

ORDER

- (i) In connection with C.R. No.563 of 2018 registered with Phaltan Gramin Police Station, Satara, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30.000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)