

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

CRIMINAL BAIL APPLICATION NO.117 OF 2020

1. Gautam Kashinath Donde, &
2. Vinu @ V inayak Suresh Chavhan. Applicants
Versus
The State of Maharashtra Respondent

Ms. Sushma T. Mishra, Advocate for the Applicant.
Mr. S.S. Pednekar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 17^h JULY, 2021
[Through Video Conferencing]

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No.254/2018 registered at Padagha police station, Thane on 20.10.2018 under Sections 307, 341, 504, 120B of the Indian Penal Code and under Sections 3 & 25 of the Indian Arms Act.

2. Heard Smt Sushma Mishra, learned counsel for the applicants and Shri S.S. Pednekar, learned APP for the State.

3. Learned counsel for the applicants submitted that the applicants were arrested on 21.10.2018. Thereafter they were granted bail because of spread of COVID-19 pandemic in the month of April, 2020. Thereafter the applicants surrendered on 2.2.2021. After that, again they were granted temporary bail on the same ground of spread of COVID-19 on 2.6.2021. These orders were passed by the trial Court. Hence as of today both the applicants are on interim bail.

4. Present application is pending before this Court since long and, therefore, I have heard the parties for decision of this particular application. After hearing the parties and after perusal of the entire charge-sheet I am of the opinion that this is an application wherein the applicants deserve to be released on bail. I am aware that the applicants are on interim bail today. Therefore, since I am inclined to grant them bail pending trial, technically they will have to surrender before the trial Court and execute bail bonds and furnish sureties as directed by this order.

5. The prosecution case is as follows :

. The first informant Rajesh Gaikar was having enmity with Sachin Ghodwinde, Jitendra Ghawat, Sameer Ghodwind, Eknath Bhoir, Ajay Patil etc.. The informant's opposite group wanted to eliminate him because of the business rivalry. According to the prosecution case, they engaged accused Somnath Chavan by paying him Rs.10 Lakhs. He, in turn, engaged applicant No.2 Vinayak Chavan and nine others to execute this offence. There are allegations that applicant No.1 Gautam Donde kept watch on the movements of the first informant and supplied this information to other accused. Other accused, including applicant No.2, intercepted the informant's vehicle on 20.10.2018 in the night. Some accused had followed the informant on their motorcycles. Two accused Mahesh Chandilkar and Chetan were chased by the first informant. At that time when the informant had got down and was walking towards these two accused, they fired 4 to 5 rounds towards him with two pistols.

6. Learned counsel for the applicants submitted that

there is absolutely no material against the present applicants. She submitted that the incident had taken place in different parts; and in the main incident of firing neither of the applicants was in the picture. It was only when the informant had chased the main accused, they had retaliated by firing at him. In the offence, nobody has got injured.

7. The only evidence against applicant No.1 was that he kept watch and he has used motorcycle for that purpose. The evidence against applicant No.2 is that there was recovery of Qualis vehicle at his instance. Said vehicle is not really connected with the incident of firing.

8. Learned APP opposed this application. He submitted that the offence is serious. Fire-arm is used in the offence and, therefore, bail should not be granted to the applicants.

9. I have considered these submissions. As mentioned earlier, the incident had taken place in two different parts. In the first part, the informant's vehicle was

intercepted by a Qualis vehicle. The prosecution case perhaps is that applicant No.2 was in the Qualis vehicle but the informant has not stated so in his statement and there is no further evidence in the form of identification parade etc..

10. The main incident of firing had occurred after that. The informant had seen that the Qualis vehicle had gone towards Khadavali village. They were followed by two persons on a motorcycle. The informant chased those two persons on that motorcycle. After about 1 k.m., those two persons on the two-wheeler could not go very fast at a longer distance because people in that village started gathering on the road. Therefore, they had to get down. At that time the informant got down and started walking towards the accused. At that time both have fired towards him. Even then the informant has not suffered any injury.

11. Therefore, applicant No.2 if he was present in the Qualis has no connection with the later part of the incident. There is no allegation that applicant No.1 was present at the spot. The only role attributed to him is that he had kept

watch with his motorcycle on the informant's movement. For that purpose some statements are recorded that the motorcycle was owned by him but that hardly can be described as an incriminating piece of evidence.

12. There are statements of witnesses, like Anil Dongre, which are recorded under Section 164 of Cr.P.C. Those statements merely state that there was some quarrel because of overtaking of the vehicle two days prior to this main incident and that applicant No.2 was talking secretly with unknown persons. But there again it can hardly be said as incriminating evidence. The recovery of Qualis vehicle at the instance of applicant No.2 also does not take the prosecution case any further. Because as mentioned that was at the highest used in the first part of the incident. In this view of the matter, there is hardly any evidence against the present applicant and they deserve to be released on bail.

13. As mentioned earlier, the applicants are today on temporary bail and, therefore, technically they will have to surrender before the trial Court and then execute PR bonds

and furnish sureties. Hence, the following order :

ORDER

- (i) In connection with C.R.No.254/2018 registered with Padagha police station, Thane, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two sureties each in the like amount.
- (ii) The applicants are permitted to surrender before the trial Court and complete the formalities of furnishing sureties and execution of the PR bonds.
- (iii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)