

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1065 OF 2020

MUKHTAR IQBAL SHAIKH)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Satyavrat Joshi, Advocate for the Applicant.

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

CORAM : V. G. BISHT, J.

**RESERVED ON : 6th DECEMBER 2021
PRONOUNCED ON : 15th DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.441 of 2015 registered with Police Station Loni Kalbhor, Pune, for offences punishable under Section 302, 307 read with 34 of the Indian Penal Code (IPC) and under Sections 3(25) (27) of the Indian Arms Act.

AVK

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2 It is the case of prosecution that on 12th December 2015, informant's friend Dattatray Ambekar had been to his house. From there they went to Mahalaxmi Hotel at Uruli Devachi. Informant's cousin Dadasaheb Modak had also accompanied him. They all had alcohol. A quarrel took place in the hotel with accused Ajay Shinde, Mukhtar Shaikh (applicant) and Nitin Bhalekar with the Manager of the hotel.

3 According to prosecution on 13th December 2015 applicant, Nitin Bhalekar and Ajay Shinde met the informant and a verbal altercation ensued between Dadasaheb Modak and Nitin Bhalekar. They had been to Hotel Gangotri Permit Room. Again there was a quarrel between these three persons and the Hotel Manager. It is alleged that accused Ajay Shinde fired at Dadasaheb Modak who got injured and thereafter, Dattatray Ambekar was shot, who later on succumbed to the bullet injury on the spot. Accordingly, First Information Report (FIR) came to be filed.

4 Mr.Satyavrat Joshi, learned counsel for the applicant, submits that it is not the case of prosecution that the firearm was used by the applicant nor any other overt act is attributed. The learned counsel then invited my attention to the Injury Certificate and submitted that all the injuries were caused by means of pistol. The pistol is also recovered at the instance of some other accused who is already on bail. Investigation is completed and charge-sheet has been filed. The trial is yet to commence and it may take considerable time. In such circumstances, applicant may be enlarged on bail, argued learned counsel.

5 Mr.H.J.Dedhia, learned APP, on the other hand, submits that the presence of the applicant at the time of incident is very much established. The learned APP also invited my attention to the statement of Vishwas Punaji Modak and submitted that there being no merit in the application, the same is liable to be rejected.

6 Perused the FIR and investigation papers. From the FIR it is clear that the incident took place on 13th December 2015 in Hotel Gangotri at Mauje Uruli Devachi. Admittedly, accused namely Nitin Bhalekar, Mukhtar Shaikh (applicant) and Ajay Shinde were present there and on account of earlier quarrel, it was accused Ajay Shinde who took out a pistol and firstly shot at Dadasaheb Modak followed by Dattatray Ambekar. In the said incident, Dattatray Ambekar succumbed to the bullet injury. I have also gone through the statement of other witnesses. No overt act is attributed to the applicant. It appears that the main accused is Ajay Shinde. As far as recovery of pistol is concerned, the same is recovered at the instance of accused Santosh @ Santram Ankush Sawant who has already been enlarged on bail by this Court (Coram : Smt.Sadhana S. Jadhav, J.) on 29th September 2016.

7 It seems that there is recovery of an autorickshaw at the instance of applicant also.

8 Having regard to the above discussion and that no cogent and convincing evidence prima facie is forthcoming, and the fact that the trial is yet to commence, in my considered opinion, the applicant deserves to be enlarged on bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Mukhtar Iqbal Shaikh shall be released on bail in Crime No.441 of 2015 registered with Police Station Loni Kalbhor, Pune, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)