

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

CRIMINAL BAIL APPLICATION NO.1271 OF 2020

Vithal Janku Kale	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Sachin B. Thorat for the Applicant.

Mr. A. A. Palkar, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 27th SEPTEMBER 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No.100 of 2018, registered with Kamothe Police Station, Navi Mumbai, for the alleged offences punishable under Sections 302, 34, 120B, 201 of the Indian Penal Code; Sections 3, 25, 4, 27 of the Indian Arms Act and Sections 37(1), 135 of the Maharashtra Police Act.
3. Learned Counsel for the applicant submits that there is no material to connect the applicant with the alleged offences. He submits that the allegation as against the applicant is that he purchased two suras and handed it over to accused No.1 – Anil Dere. Apart from the same, the

allegation as against the applicant is that accused No.5 – Deepak Malme handed over the pistol/gun to the applicant who in-turn handed over the same to accused No.1 – Anil Dere. He submits that there is nothing in the entire charge-sheet to show that the applicant had knowledge that accused No.1 – Anil Dere was conspiring to kill somebody and had hired accused No.4 - Vithal Kale (applicant) and accused No.5 - Deepak Malme for execution of the same. He submits that merely because the applicant handed over the suras and pistol/gun given by accused No.5 - Deepak Malme to the accused No.1 - Anil Dere cannot be said to be incriminating, inasmuch as, the applicant was working with accused No.1 – Anil Dere at his farm and as such was his employee. He submits that the applicant had no motive whatsoever to kill the deceased and did not know the hired assailants i.e. accused No. 2 - Bhagwan Khandagale and accused No.3 – Siddharth Khandagale.

4. Learned APP opposes the application. He submits that the applicant had purchased two suras from one Mushraf Qazi in June 2018 and had handed it over to the applicant. He submits that accused No.5 - Deepak Malme had also handed over a pistol/gun to the applicant, who in-turn gave the same to accused No.1 - Anil Dere. Learned APP does not dispute the fact, that the applicant has no antecedents.

5. Perused the papers. The incident is alleged to have taken place on 4th July 2018 at 9:25 p.m. According to the complainant – Abhishek Gadge, his sister – Rushali was married to Sunil Dere, who was working as a Driver in Mumbai. According to the complainant, the relations between his sister – Rushali and brother-in-law were not good and that his sister was in love with accused No.1 - Anil Dere and started residing with Anil Dere at Belhe. He has further stated that accused No.1 - Anil Dere would blackmail his sister – Rushali by showing her their photographs. It appears that thereafter Rushali's marriage was performed with Shantaram Khutal (deceased). It appears that Shantaram was also married and his divorce case was pending. After marriage, Rushali started residing with her husband – Shantaram at Kamothe. The complainant has further alleged that he had been to Shantaram's shop on 4th July 2018. He has stated that he accompanied his brother-in-law – Shantaram and that his brother-in-law - Shantaram asked him to go home. The complainant has further alleged that when he was parking his scooter, he heard some chaos at the society gate and went to see what had happened. He has stated that one person was lying in the pool of blood and saw two persons assaulting him. He has stated that one of the person asked him to leave the spot, pursuant to which he went home and informed his sister - Rushali about the same. Thereafter, the complainant and his sister went to see, who the person was,

who was lying on the road and realized that he was Shantaram. The complainant learnt from the persons gathered there about the two persons who assaulted Shantaram. Accordingly, an FIR was lodged as against unknown persons. It is the prosecution case that accused No.1 – Anil Dere had given contract killing to accused No. 2 - Bhagwan Khandagale and accused No.3 – Siddharth Khandagale to kill Shantaram. According to the prosecution, all the aforesaid accused alongwith accused No.4 - Vithal Kale (applicant) and accused No.5 - Deepak Malme conspired to kill Shantaram. As far as the present applicant is concerned, he was admittedly not present at the spot nor was he amongst the two persons who assaulted deceased – Shantaram. Neither there is any motive for the applicant to cause the deceased's death. Admittedly, the applicant was working with accused No.1 – Anil Dere in his farm. The allegation as against the applicant is that he had purchased two suras from one Mushraf Qazi and handed it over to accused No.1 – Anil Dere in June 2018. Similarly, accused No.5 - Deepak Malme is alleged to have handed over a pistol/gun to the applicant, who in-turn handed it over to accused No.1 – Anil Dere. Accused No.5 - Deepak Malme has been enlarged on bail. As far as applicant is concerned, *prima facie*, there is nothing to show that he had knowledge that the said suras or pistol/gun was to be used in the commission of an offence. The applicant has no antecedents. The

applicant is in custody since 2018 and the trial has not commenced till date.

6. Accordingly, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

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

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.