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mobile at about 09.53 p.m. that he has been shot by Tipya and Murgi Raja and further requested to come immediately. The informant then informed his brother-in-law, namely, Jahid Shaikh about the said incident. Informant along with his friend Wasim Anwar Shaikh then rushed to the spot. By the time informant's brother-in-law i.e. Jahid Shaikh and sister Jakiya had already reached there. The police had also reached. The deceased was rushed to the hospital and on way to the hospital, the deceased informed that he was summoned by Tipya at Regimental Plaza with a view to settle earlier dispute and, therefore, he accordingly went there. Accused Murgi Raja and his companion Arjun Piwal (applicant) were also there. It is then accused Murgi Raja shot at him. It then appears that during the course of treatment the deceased succumbed to the gun injury. The informant accordingly lodged the report.

3 Mr.Pandey, learned Counsel for the applicant, submits that there is no evidence to show that the present applicant was present at the time of incident. Moreover, statements of witnesses are inconsistent with each other. As far as the role of the present applicant is concerned, there being no cogent and convincing evidence, the applicant is falsely implicated. In view of the material on record, the applicant deserves to

be enlarged on bail, urged learned Counsel.

4 Mr. Palkar, learned APP, on the other hand, submits that the statement of witnesses clearly suggests the involvement of the applicant in the offence. Having regard to the seriousness of the offence, the applicant does not deserve to be enlarged on bail, argued learned APP.

5 Perused investigation papers and the statements of prosecution witnesses. The first statement which I would like to refer is that of Wasim Anwar Shaikh, who had accompanied the informant at the place of occurrence. It is his statement that while they were taking the deceased to the hospital, the deceased told that he was shot on his back by Tipu and Murgi Raja. There were two more persons with them. His statement is inconsistent with the contents of FIR. In the FIR, the prosecution alleges that the deceased was shot at by Murgi Raja. What is pertinent to note is that although FIR shows the presence of applicant at the time of incident but this witness nowhere says that the applicant was also present.

6 Next statements are that of Jakiya Jahid Shaikh and Jahid Ismail Shaikh, who are sister and brother-in-law respectively of the informant.

Both of them state that the deceased had told them that he was beaten by Tipu and Murgi Raja and the applicant. These statements are in direct conflict with not only the contents of FIR but also are in conflict with the statement of Wasim Shaikh to the extent that these two witnesses implicate the applicant also. Thus there is material and serious inconsistency between the statements of sister and brother-in-law of the informant on the one hand and the contents of FIR and the statement of Wasim Shaikh on the other.

7 Having regard to the material on record and in the light of serious discrepancy, as noted herein-above, the applicant has made out a case for bail. Hence, the following order.

ORDER

(i) Applicant- Arjun Suresh Piwal shall be released on bail in C.R. No.451 of 2020 registered with Upnagar Police Station, Nashik District-Nashik on his executing P .R. bond in the sum of Rs. 20,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature

for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL
Date: 2021.12.14
14:15:28 +0530

(V. G. BISHT, J.)