

nsc.

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

CRIMINAL BAIL APPLICATION NO.2010 OF 2019

Dattatray Kisan Pokale

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Kedar J. Patil, for the Applicant.

Ms. S. V. Sonawane, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th FEBRUARY, 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.157 of 2017 registered with the Haveli Police Station, Pune, for the alleged offences punishable under Sections 143, 147, 148, 342, 341, 302, 201, 120B r/w 149 of the Indian Penal Code and under Sections 3 (25) and 4(25) of the Arms Act.
3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the aforesaid case because of an earlier

dispute between the deceased and the applicant. He submits that only the first informant has named the applicant and that none of the other eye-witnesses have named the applicant. He submits that the applicant was in no way connected with the 'Kivale' family, who allegedly had motive to kill the deceased. He submits that the applicant is in custody since 2017 and that till date the trial has not commenced.

4. Learned APP opposed the application.

5. Perused the papers. According to the First Informant – Parmeshwar @ Vikas Tatyarao Kamble, the incident took place on 27th April 2017. It is stated that when Balasaheb Ghule (deceased), Akshay Kivale and he were going in their Scorpio vehicle at around 11:30 a.m., one white Scorpio was standing at the side of the road. He has stated that after they passed the said Scorpio vehicle and went ahead, a dumper came from the opposite direction; that the said dumper belonged to accused – Milind Kivale and one Tanaji Kamble was driving the said dumper. He has stated that Tanaji Kamble dashed their vehicle i.e. Scorpio, as a result of which, it turned turtle; that immediately thereafter, the white Scorpio which was standing on the side of the road came to the spot; and that Milind Kivale was driving the said vehicle. According to the complainant, Milind Kivale,

Rahul Kivale, Akshay Choudhary, Dattatray Pokale (applicant) and 5 unknown persons got down from the said vehicle; that Tanaji Kamble also got down from his dumper. The complainant has stated that Tanaji Kamble was armed with a revolver, Milind with a pistol, Rahul with a revolver, and that Akshay, Dattatray Pokale (applicant) and other 5 were armed with koytas. The complainant has alleged that as Tanaji and Rahul fired on their vehicles (on the glass pane), he got down from the said vehicle. He has stated that Milind, Rahul, Tanaji and others pulled out Balasaheb (deceased), from the said vehicle and thereafter all the accused assaulted the deceased with their koytas. The postmortem report shows that the deceased (Balasaheb) had sustained as many as 19 injuries i.e. one firearm and multiple chop wounds and incised wounds, on his person. The cause of death is stated to be "Traumatic and Haemorrhagic Shock due to firearm injury associated with multiple chop injuries."

6. Although, learned counsel for the applicant submitted that the other eye-witness – Akshay Kivale has not named the applicant, a perusal of the statement of Akshay shows that he was hiding in the dickey and hence probably could not see all the persons. Whether or not the applicant is falsely implicated in the aforesaid case and whether or not the applicant had motive to kill the deceased, is a matter which will be decided by the

trial Court, at the time of the trial.

7. *Prima facie*, considering the statements of the first informant and others, coupled with the multiple injuries sustained by the deceased, this is not a fit case to enlarge the applicant on bail.

8. Hence, the application for bail is rejected and disposed of as such. However, having regard to the fact that the applicant in custody since 2017, the trial of the applicant is expedited. The learned Judge to conclude the trial as expeditiously as possible and preferably within 16 months from the date of receipt of this order.

9. 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.

REVATI MOHITE DERE, J.