

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 158 OF 2022

Santosh Suresh Kamble

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. V.S. Badakh, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT, J.
DATE : 19th JULY, 2022**

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 359 of 2019 registered with Loni Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 201, 143, 147, 148, 149 of the Indian Penal Code and under Section 3/25 of the Arms Act.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by mother of the deceased on 02nd December, 2019. It is her case that on 01st December, 2019, the applicant and

co-accused Siraj and Shahrukh were insisting her son – Fardin (deceased) to accompany them to visit Nashik. She had asked Fardin not to accompany them since just two days before a crime was registered against them. Fardin had told the informant that they have given him threats to his life if he did not join them. According to the informant, Fardin had, therefore, no option but to accompany the applicant and those two others named in the F.I.R.

4. As per the case of the prosecution, the applicant – Santosh, Siraj, Shahrukh and four others named in the F.I.R. checked in the hotel Sai Chatrapati, Loni on 01st December, 2019. Fardin was in their company. He suffered firearm injury. He was, therefore, shifted to P.M.T. Hospital, Loni. He breath his last in the hospital.

5. Mother of the deceased, therefore, lodged the F.I.R. alleging all the seven accused named in the F.I.R. to have murdered her son, Fardin. Investigation of the crime was made. Charge-sheet has been filed. Co-accused - Akshay Bansode was absconding. On his arrest a supplementary charge-sheet came to be filed against him. Statements of waiters in the hotel were recorded. While the deceased was taken to the hospital, the applicant and two others informed the waiter that the deceased has suffered giddiness and was, therefore, being shifted to the hospital.

6. Learned counsel for the applicant would submit that co-accused Akshay Bansode made a disclosure statement wherein it was stated that while he was handling the firearm, the trigger thereof got pulled inadvertently. The deceased suffered firearm injury accidentally. While in the disclosure statement made by the applicant herein, it is stated that co-accused – Akshay Bansode shot the deceased dead. According to learned counsel, the applicant had no role in the alleged crime. He has been behind the bars for little over two and half years. He, therefore, urged for grant of the application.

7. Learned A.P.P. would, on the other hand, submit that the deceased was in the company of the applicant and co-accused. The deceased died of firearm injury. The investigation indicates the deceased was shot dead. The offence is serious one. He, therefore, urged for rejection of the application.

8. Considered the submissions advanced. Admittedly, the deceased had been in the company of the applicant and the co-accused. All of them checked in Room Nos. 8 and 9 of Hotel Sai Chatrapati, Loni. There is no independent witness to the incident. As per the disclosure statement made by the applicant herein, co-accused Akshay Bansode shot the deceased dead. Co-accused – Akshay Bansode had been absconding. On his arrest, a supplementary charge-sheet has been filed. He made a disclosure statement that while handling with the fire rm, the trigger got inadvertently pulled.

9. What can be gathered from the prosecution case is that it was co-accused Akshay Bansode, who shot the deceased dead. The applicant was in the company of Akshay Bansode and other co-accused. Akshay Bansode had been absconding for long. The applicant has been behind the bars for little over two and half years. I am, therefore, inclined to grant the application.

10. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 359 of 2019 registered with Loni Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 201, 143, 147, 148, 149 of the Indian Penal Code and under Section 3/25 of the Arms Act, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD