

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

BAIL APPLICATION NO. 1445 OF 2022

Shubham Vijay Kadam

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mrs. R.S. Kulkarni, Advocate for applicant
Mr. V.S. Badakh, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT, J.
DATE : 27th SEPTEMBER, 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 and 506 read with Section 34 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, co-accused

Santosh Kamble, 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 them.

4. As per the case of the prosecution, the applicant – Shubham, 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 co-accused – Santosh Kamble, 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 co-accused – Santosh Kamble, 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 arm, the trigger got inadvertently pulled.

9. It has also been informed by learned counsel that two rooms i.e. Room Nos. 8 and 9 were occupied by all of them. The prosecution is not clear as to who were in Room No.8 and who were in Room No.9. The incident took place in Room No.9. Now the prosecution concedes that it was co-accused – Akshay Bansode, who had opened fire at the deceased. The deceased died of firearm injury. There is nothing to indicate whether it was a case of conspiracy or the applicant herein had any way abetted commission of murder of the deceased. These are the observations prima facie in nature. The applicant has been behind the bars since 06th December, 2019. Trial has not yet commenced. 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 on bail, 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 and 506 read with Section 34 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