

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

21 BAIL APPLICATION NO.1722 OF 2021

AABA BHIKA JAGTAP
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Menezes Joslyn A.

APP for Respondents/State : Mr. V.S. Badakh

...

CORAM : M.G. SEWLIKAR, J.

DATE : 7th March, 2022

PC.:-

This is an application for releasing the applicant on bail in connection with Crime No. 150/2017 under Section 302, 120-B, 504, 506 of the I.P.C. and under Section 3/25, 4/25 of the Arms Act registered with Dhule City Police Station, District Dhule.

2. Facts in brief are that the informant is friend of Shaikh Rafiuddin Shaikh Shafiuddin @ Gudya (since deceased). Gudya was on cross terms with Bhadra @ Rajendra Devre, Bhima, Dadu, Sham Goyar, Vicky Goyar, Chota Papa, Bada Papa.

3. On 18th July, 2017 at 5.30 am, informant and Gudya stopped at Gopal Tea House to drink tea. At 6.15 am accused-Bhadra @ Rajendra Devre came there running with a revolver in his hand and fired at Gudya. Bhima

and Dadu also came there. Dadu threw chilly powder in the eyes of Gudya. Accused-Bhima assaulted Gudya by means of a sword. Chota Papa fired at Gudya. Bada Papa and Vicky assaulted Gudya by means of a sword. Three to four persons assaulted with sword, iron rod and sickle. Gudya died on the spot. On these allegations FIR came to be registered against the applicant.

4. During investigation it was revealed that applicant had facilitated the commission of the offence by providing location of Gudya to other accused.

5. Charge-sheet is filed.

6. Learned counsel Shri Menezes submits that the only evidence against the applicant is that he facilitated the commission of the offence by providing the location of the deceased-Gudya. In support of this allegation, no evidence is collected by the prosecution except the CDR. Applicant and other accused are friends. Therefore, there is nothing unnatural if applicant was in touch with other accused on cell phone. His name is not mentioned in the FIR.

7. Learned APP Shri Badakh points out that witness Vinay Runwal stated that he was standing at Gopal tea house along with a friend, at that time he saw five to six persons coming there armed with dangerous weapons. Therefore, he took to heels from the spot of the incident while running he

heard two sounds of firing. Later on he came to know that applicant was one of the assailants. Similar is the statement of witness-Chandrakant and other witnesses.

8. Charge-sheet is filed. Therefore, custody of the applicant is not necessary. The only evidence which prosecution could collect against the applicant is that he had provided location of Gudya to other accused on the cell phone. It is not in dispute that applicant and other accused are friends. Therefore, simply on the basis of CDR it cannot be inferred that applicant provided location to other accused. Therefore, there is nothing unnatural if the applicant was in touch with the accused.

9. Informant does not mention about the presence of the applicant at the spot of the incident. However, witnesses Vinay Runwal and Chandrakant Goyar mentioned the name of the applicant as one of the assailants. However, these witnesses have not mentioned the name of the applicant. They have mentioned that later on they came to know that one of the assailants was the applicant. Identification parade was held but this witness failed to recognise the applicant. Having considered the evidence as collected by the prosecution it cannot be said that there is any *prima facie* case against the applicant. Learned counsel Shri Menezes submitted that the applicant has no criminal antecedents. In view of this, I am inclined to grant

bail to the applicant. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.150/2017 under Section 302, 120-B, 504, 506 of the I.P.C. and under Section 3/25, 4/25 of the Arms Act with Dhule City Police Station, District Dhule on condition that he shall not tamper the prosecution evidence and shall attend the dates fixed in the trial.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]