



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

BAIL APPLICATION NO. 2679 OF 2023

CHETAN @ PANDYA BHAUSAHEB

PHALKE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Sana Raees Khan a/w Mr. Aniket Pardeshi for the
Applicant.

Ms. A.S. Pai, PP a/w Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 07, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned P.P. for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 302, 201, 34 of the Indian Penal Code and Sections 3(25) and 4(27) of the Arms Act, registered on 06/05/2022 vide C.R. No.169 of 2022 with Paud Police Station, Pune.
- 3.** The incident occurred on 05/05/2022. There are in all 3 accused. The applicant is accused No.1. The deceased is Pritam Phalake. Learned counsel for the applicant

submitted that the applicant is entitled for bail on the ground of parity. It is submitted that the co-accused Ramesh urf Shankar Bhagwan Sukale who was also armed with the pistol and attributed a similar role has been granted bail by this Court by order dated 26/07/2023. It is further submitted that the prosecution version is based on the statement of the eyewitness whose statement was recorded on 15/08/2022 almost 3 months and 10 days after the incident took place. It is submitted that this is clearly a case of false implication, as though witnesses have stated that there was firing at the deceased by a revolver, there are no corresponding firearm injuries. It is submitted that the applicant is not the author of the injuries.

4. The post-mortem notes reveal that several injuries have been suffered by the deceased. The victim is assaulted brutally. The cause of death is due to head injury. No doubt, the statement of the eyewitness is recorded almost after 3 months and 10 days, however, at this stage it is possible for me to form any opinion that delay by itself is a factor to doubt the statement. The materials on record coupled with

the statement of the eyewitness, *prima facie*, indicate the complicity of the applicant. The specific role attributed to the applicant is that he assaulted the victim on his head with a stone. There are corresponding injuries in the post-mortem notes. The bloodstained stone was found on the spot. The pistol has been recovered from the applicant as well as the co-accused. The learned counsel for the applicant strenuously urged that the co-accused who was also armed with the pistol and allegedly fired a bullet at the deceased has been enlarged on bail and therefore, the applicant can be enlarged on bail whose role is on the same footing as the co-accused No. 3 who has been enlarged on bail. The specific case is that the applicant assaulted the victim on his head with a stone. There is a corresponding injury. It is alleged that the accused No.2 assaulted the victim with a sickle, the post-mortem notes reveal that there are incised wounds. I do not find this is a fit case for enlarging the applicant on bail.

5. The application is rejected.

(M. S. KARNIK, J.)