

SA Pathan

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

BAIL APPLICATION NO.3513 OF 2022

Tejabsingh @ Tejas S. Kalyani ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Rohan Hogle, for the Applicant.

Mrs. Rutuja Ambekar, APP for the State – Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 5, 2023

PC.:

1. This is an Application filed under Section 439 of the Code of Criminal Procedure (for short 'Cr.PC') seeking release of the Applicant on bail in connection with CR No.801 of 2019 registered with Hadapsar police station for offences punishable under Sections 302, 506 read with Section 34 of the Indian Penal Code (for short 'IPC') and under Section 3 (25) of the Arms Act and under 3 and 7 of the Criminal Law Amendment Act.

2. The prosecution case in short is as under:

One Rajendra Gunjal lodged a complaint alleging that on 13th August, 2019 at about 18:30 hours while he along with his brother Mayur and his friend Sunny Gavali were standing at Ganganagar main road chowk at that time the Applicant along with co-accused came there and started quarrel with Mayur. The complainant and another person tried to intervene and tried to

stop the quarrel. However, co-accused warned them not to intervene in quarrel. The Applicant removed his pistol and fired on Pancha Swami. The people in the vicinity gathered at the spot of incident and took Pancha Swami to hospital. During treatment Pancha Swami succumbed to bullet injury fired by the Applicant. The investigating agency carried out investigation and filed charge-sheet.

3. The Applicant, therefore filed an Application before the Sessions Judge which came to be rejected by an order dated 23rd June, 2020. The Applicant has, therefore, filed present Application seeking his release under Section 439 of the Cr.P.C.

4. The learned Advocate for the Applicant submitted that there is unexplained delay in lodging the First Information Report. There was neither notice nor intimation of Applicant to cause death of the deceased. The injury was not on vital part. Copy of CCTV footage has been suppressed. Despite request of the Applicant, CCTV footage has not been furnished to the Applicant.

5. The learned APP objected for release the Applicant on bail mainly on the ground that the Applicant was carrying pistol at the place of incident. The incident took place in public place. The material on record indicates prima facie that the Applicant fired on the deceased resulting into his death. The statements of six (6) witnesses indicates that the Applicant was carrying pistol. The material on record also indicates that the death of deceased was due to bullet injury. She invited my attention to the statement of witnesses which indicates that the incident alleged in the report

took place near the hotel.

6. I have carefully considered the material on record. The statement of six (6) witnesses recorded by the investigating agency, prima facie indicates that the Applicant was carrying pistol. Remaining co-accused who carrying other weapons. All the accused persons fled the place of incident in four-wheeler vehicle. The material in the form of statement of one of the witnesses indicates prima facie graphic details of incident. It also attributes that the acting role to the Applicant is firing on the deceased resulting into fatal injury to the deceased.

7. The learned Advocate for the Applicant submitted that despite request of CCTV footage was not furnished to the Applicant. There cannot be dispute about the proposition of law that the material available with the prosecution needs to be furnished to the accused. However, this lapse not sufficient to release the Applicant on bail. In view of statements of witnesses at the time of the incident, I am satisfied with the material on record, it is sufficient to show active role played by the Applicant of firing the pistol on the deceased which ultimately resulted into the death of the deceased. The injury certificate and post-mortem report on record supports the case of prosecution that the death was due to injury caused by bullet. Therefore, in my opinion, even if, remaining co-accused are released on bail, the Applicant is not entitled to be released on bail. Gravity and seriousness of the offence is one of the factors which raised with the Court while considering the Bail Application under Section 439 of Cr. P.C. Therefore, in my opinion, no case under Section 439 of Cr.P.C. is

made out. The Bail Application is rejected.

8. It is made clear that the observations made in the order are only for the purpose of deciding the Bail Application under Section 439 of the Cr. P.C., and the trial Court shall decide the case on its own merits uninfluenced by observations made in the order.

(AMIT BORKAR, J.)