



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

**BAIL APPLICATION NO.1275 OF 2018
WITH
CRIMINAL APPLICATION NO.3259 OF 2018**

Mukesh @ Bhagya Murlidhar Amrutsagar,
Age: 30 years, Occu.: Labor,
R/o. Near Station Road, Dhule,
Dist. Dhule

= **APPLICANT**

VERSUS

The State Maharashtra
Through : Police Station Officer,
Dhule Taluka Police Station, Dhule;
Tq. & Dist. Dhule

= **RESPONDENT**

...

Shri Pawar Pawan B., Advocate for Applicant;
Shri A.S. Shinde, APP for Respondent State.

...

WITH

BAIL APPLICATION NO.1330 OF 2018

Pankaj Parshram Jiseja,
Age: Major, years, Occu.: Nil,
R/o. Plot No.258, Padmanabh Nagar,
Sakri Road, At/Post/Tal/Dist.Dhule

= **APPLICANT**

VERSUS

The State Maharashtra
Through Police Station Officer,
Dhule Taluka Police Station, Dhule,
Tal.&Distt. Dhule

= **RESPONDENT**

...

Shri. Pawar Pawan B., Advocate for Applicant;
Shri. A.S. Shinde, APP for Respondent State.

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CORAM : P.R.BORA, J.

DATE : 28th November, 2018

PER COURT

1. Application to assist APP is allowed and disposed of.

2. Heard Shri Pawar, learned counsel appearing for applicants and learned APP for State.

3. Since both these applications are arising out of one crime, I have heard common arguments in the present matters and I deem it appropriate to decide these applications by a common reasoning.

4. The applicants are being prosecuted in Crime No.359/2017 registered at Police Station, Dhule Taluka for the offences punishable under Sections 302, 120(B) read with 34 of IPC and under Section 3/25 and 27 of Indian Arms Act.

5. It is the case of the prosecution that deceased Dipak Wagh was taken by the accused persons on the pretext of taking dinner at some remote place and at the said place, he was shot dead. In so far as present applicants are concerned, the weapon of offence, i.e. pistol, is said to have been recovered at the instance of applicant Mukesh Amrutsagar. In so far as applicant Pankaj Parasram Jiseja is concerned,

his blood-stained clothes were seized during the course of the investigation.

6. The FIR was lodged by uncle of deceased viz. Sahebrao Vitthal Wagh. The FIR reveals the names of five persons including the present applicants. In the FIR, admittedly, no specific allegation was made against any of the accused to have fired the gun shot on deceased Dipak. During the course of investigation, it was revealed that there was some dispute between deceased Diipak and the accused persons on account of certain contributions/donations collected for renovation of statue of Dr.Babasaheb Ambedkar in their village at Kundane.

7. In her statement, mother of the deceased viz. Smt. Raskor Dagadu Wagh has provided some more particulars that on the date of incident, deceased Dipak was called by one Abhay @Babaji Amrutsagar, who is stated to be accused No.1 in the present matter. It is further stated by smt. Raskor that subsequently it was revealed to her that in the night of 11th December, 2017, when the accused in the present matter and deceased Dipak were making party, some dispute arose at the relevant time and

in the said incident, somebody fired a gun shot on person of deceased Dipak, which ultimately became cause of his death.

8. Shri Pawar, learned counsel appearing for the applicant, submitted that the prosecution has not succeeded in collecting any material indicating as to whether anybody had intentionally fired on person of deceased Dipak or firing of the shot from the said pistol was a mere accident. The learned counsel further submitted that considering the material, which has been collected against the applicants in the present applications, it is difficult to accept that they have played any incriminating role in commission of the alleged crime. The learned counsel submitted that even if the material collected by the prosecution is read as it is, even then in view of fact now entire investigation has been completed, presence of the applicants behind the bars is not at all warranted. The learned counsel submitted that both the applicants are behind the bars since last about 11 months. The learned counsel submitted that from the material collected by the prosecution, a reasonable inference is emerging that it is not the

case of homicidal death, but is a case of an accidental death. The learned counsel further submitted that even otherwise, serious allegations are against accused No.1 and the enmity etc. is also alleged against the said accused. For all these reasons, the applicants have prayed for their release on bail.

9. Learned APP Shri Shinde has opposed for accepting the request so made by the applicants. The learned APP, taking me through the panchanama carried out under Section 27 of the Evidence Act, submitted that the weapon of offence has been recovered at the instance of the applicant Mukesh Amrutsagar and that circumstance is enough to prima facie prove his involvement in commission of the alleged crime. The learned APP further submitted that the blood-stained clothes seized from the person of another applicant viz. Pankaj also prima facie show his presence on the spot of occurrence as well as involvement in commission of the alleged crime. The learned counsel further submitted that considering the serious nature of offence, the request so made by the applicant deserves to be rejected.

10. I have given due consideration to the submissions made by the learned counsel appearing for the applicants and learned APP, assisted by Adv.Bora, who is permitted to assist the prosecution. After having considered the entire material on record, there appears substance in the submissions made by the learned counsel for the applicant that the prosecution has not succeeded in collecting any direct evidence as about firing of gun shot by any particular accused on person of the deceased. Moreover, after having read the statements of majority witnesses, theory canvassed by the counsel for the applicants of entire incident happening on the spur of movement, is difficult to be ruled out. Mere recovery of weapon of offence at the instance of applicant Mukesh or the blood-stained clothes on person of another applicant Pankaj, may not be sufficient to reach to any concrete conclusion as about their involvement or complicity in commission of the alleged crime. Though it may not be proper at this stage to make any more discussion as about merit of the material collected by the prosecution, it does not appear to me that presence of the present applicants-accused

in custody is required henceforth even after filing of the charge sheet in the matter. As has been submitted by learned counsel, the applicants are permanent residents of Dhule and are not likely to abscond. Both the applicants are of young age. They are behind the bars since last 11 months. In the circumstances, there appears no reason to keep the applicants behind the bars for indefinite period. I am, therefore, inclined to allow their applications. Hence, the following order, -

ORDER

- i. The bail applications are allowed;
- ii. The applicants be released on their executing PR bonds in the amount of Rs.30,000/-each with one or more sureties in the like amount;
- iii. The applicants shall not tamper with the prosecution evidence in any manner.
- iv. Bail before the Sessions Court.

(P.R.BORA)
JUDGE

bdv/