

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

Criminal Application No. 2016 Of 2015.
WITH
Criminal Application No.1927/2015.

Criminal Application No.2016/15.

**NAWAB JAANI S/O QUMAR BAIG.
VERSUS
THE STATE Of MAHARASHTRA.**

Criminal Application No.1927/15.

**KAISAR MIRZA S/O BHADUR MIRZA.
VERSUS.
THE STATE OF MAHARASHTRA.**

Appearance =>

Mr. Nilesh Ghanekar, Advocate for the Applicant in Criminal Application No.2016/15.

Mr. R.R. Shaikh, Advocate for the Applicant in Criminal Application No.1927/15.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : **V.M. Deshpande, J.**

DATE : **27th April, 2015.**

Per Court :-

The applicants in these two Criminal Applications are seeking their release on regular bail, in connection with CR No. I 63/2014 registered with Police Station, Mahur, District - Nanded for the offences punishable

under Section.s. 302, 109, 120B, 211, 201 read with 34 of the Indian Penal Code.

[2] Heard Mr. Nilesh Ghanekar, Advocate for the Applicant in Criminal Application No.2016/15, Mr. R.R. Shaikh, Advocate for the Applicant in Criminal Application No.1927/15. Mr. A.S. Shinde, Additional Public Prosecutor opposed both the Criminal Applications.

[3] Investigating agency has already completed the entire investigation and charge sheet is already filed in the court of law. Present case is of double murder. First Information Report was lodged by Vikar Ahmed s/o Nawab Jani on 11th September, 2014. On the basis of said, offence was registered against the unknown persons.

[4] There is no eye witness account in the prosecution case. Entire case of the prosecution is based on circumstantial evidence. The circumstances which are pressed into service to decide the present applications, is the CDR report that on 07/09/2014 the applicants were in touch with the other co accused. The CDR report in so far as applicant Nawab Jani (Applicant in Criminal Application No.2016/15) is concerned is tried to be corroborated by the learned Additional Public Prosecutor by pointing out the statement of one Wasim Khan, who disclosed in his statement that on 07/09/2014 he saw Applicant Nawab Jani alongwith other co accused in a Hotel Jamzam. Said fact is also corroborated by Sayyed Jahiroddin, who is the owner of said Hotel. However, there is nothing available on record in the nature of CDR that from 07/09/14 to 10/09/14 i.e. the date of incident, present applicant Nawab was in touch with other co accused persons.

[5] Further the statements of these two witnesses are recorded at belated stage i.e. on 17/11/2014. In so far as CDR report of applicant Kaisar (Applicant in Criminal Application No.1927/15) is resident of Mahur, Dist. Nanded. In that view of the matter, CDR report showing his presence at Mahur cannot be a incriminating circumstance.

[6] Further the learned Additional Public Prosecutor tried to invite attention of this court to the statement of Kadir-khan and also Ejaj Khan. Statements of these two witnesses are recorded on 03/01/15 and further according to their statements, Kaisar was seen with co accused Anwar on 16/09/14 i.e. subsequent to the date of incident.

[7] Further admittedly, there is no recovery at the instance of any of the present Applicants. Since case is totally based on circumstantial evidence, by virtue of only CDR, that too having no proximity with the date of incident, personal liberty of the applicant/s cannot be further curtailed. In that view of the matter, I pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Applicant - NAWAB JAANI S/O QUMAR BAIG (Applicant in Criminal Application No.2016/15) and Applicant - KAISAR MIRZA S/O BHADUR MIRZA (Applicant in Criminal Application No.1927/15.) shall be released on regular bail on they executing P.R. Bond of Rs. 30,000/- [Rs. Thirty Thousand.] each with two solvent surety in the like amount, in connection with CR No. I 63/2014 registered with Police

Station, Mahur, District - Nanded for the offences punishable under Section.s.302, 109, 120B, 211, 201 read with 34 of the Indian Penal Code.

(iii) Bail before trial court.

(iv) The applicants in both the Criminal Applications shall attend the Police Station, Mahur, District - Nanded once in a week, preferably on every Sunday and shall remain present in Police Station between 3.00 p.m. to 3.00 p.m.

(v) Both the Criminal Applications are allowed and same are disposed of accordingly.

(V.M. DESHPANDE, J.)

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