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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL BAIL APPLICATION NO. 865 OF 2015
IN
CRIMINAL APPEAL NO. 682 OF 2014**

Shri Dnyaneshwar Balu Patole,
aged 27 years, R/s. Sarsang Phatagaon,
Tal. Khopoli, District Raigad, original
R/o. Thomas Colony, Naer Anand Ashram,
Dehuroad, Taluka : Haveli, Dist. Pune
at present lodged at Yerweada Central
Prison, Pune.

.. Applicant/
(Orig. Accused No.5)

V/s.

The State of Maharashtra
(at the instance of Dehuroad Police
Station, Pune Vide CR No.272/2008)

..Respondent.

Ms. Harjeet Kaur Bhagwant Singh a/w Shri A.S. Anand for the
applicant.

Mr.H.J. Dedhia, A.P.P. for the respondent State.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.
DATED : 20th OCTOBER, 2015**

Per V.L. Achliya,J. :-

1. The present application is filed by the appellant/original
accused no. 5 seeking release on bail.

2. The applicant/original accused no. 5 was tried for
committing the offence punishable under section 302 read with
section 149, section 120B of Indian Penal Code and section 25(1)(b)
(a) and section 27(1) of the Indian Arms Act. On conclusion of the

trial, learned Additional Sessions Judge, Pune has convicted the applicant/original accused no. 5 along with co-accused nos. 1, 2, 3, 4 and 6 for committing the offence punishable under section 302 read with section 149 and 120B of Indian Penal Code as well as other offences. For committing offence punishable under section 302 read with section 149 of Indian Penal Code, the applicant has been convicted to undergo imprisonment for life and fine of Rs.3,000/- and other sentences as set out in detail in the order. Being aggrieved by the order of conviction, the applicant/original accused no. 5 has preferred this application seeking release on bail pending the disposal of the appeal for the reasons and grounds set out in detail in the application.

3. We have heard the learned counsel for the applicant, learned Additional Public Prosecutor for the State and carefully considered the submissions advanced in the light of the judgment and order passed by the Sessions Court. We have also perused the copies of the depositions of the witnesses as referred and relied upon during the course of submissions.

4. In nutshell, it is the contention of the learned counsel appearing for the applicant that the conviction of the applicant/original accused no. 5 is not sustainable in law as there is no cogent, convincing and reliable evidence to hold him guilty for

the offences for which the trial Court has convicted the applicant. By referring the testimony of the two eye witnesses (i.e. PW No. 2 and 3) relied by trial Court to convict the applicant, the learned counsel argued that the testimony of said witnesses cannot be relied and form the basis to convict the applicant. It is contended that both the witnesses are the got-up witnesses. There was gross delay in recording the statements of both the eye witnesses. The circumstances brought on record make out a case to accept the case of the defense that both the eye witnesses are got-up witnesses and they have deposed against the applicant at the instance of the opponent. The learned counsel has further pointed out the discrepancy as regards the identity of the applicant and other lacuna in the prosecution case.

5. On the other hand, the learned Additional Public Prosecutor for the State has submitted that there is cogent, convincing and clinching evidence brought on record by the prosecution to establish the guilt of the applicant beyond reasonable doubt. He has submitted that there is absolutely no case made out for the release of the applicant on bail.

6. We have carefully considered the submissions advanced in the light of the records and proceedings. We are of the view that no case has been made out for the release of the applicant

on bail during the pendency of the appeal. We refrain ourselves to make any observations as regards the credibility of the testimony of the two eye witnesses as referred and relied upon during the course of the submissions by the learned counsel for the applicant, for the reason that making of any observations in that regard, while dealing with bail application, may cause prejudice to either side. In our view, there is evidence on record to prima facie connect the applicant with the commission of the offence. The reasons and findings recorded by the Sessions Court to convict the applicant cannot be termed as "perverse". The learned Additional Sessions Judge has analyzed the evidence in minute details. The perusal of the judgment and order passed by the Sessions Court discloses that the learned Additional Sessions Judge has relied upon the testimony of PW Nos. 2 and 3, the eye witnesses relied upon by the prosecution to establish the complexity of the applicant in commission of the offence. Perusal of the testimony of both the eye witnesses prima facie shows that they have given complete account of the incident which they have witnessed and attributed the specific role to the applicant as one of the assailant in causing the murder of the deceased. It further reveals that the vehicle used in the commission of the offence was recovered at the instance of the accused nos. 4 and 5. Thus considering over all nature of the case, seriousness of the charges, and the evidence brought on record by the prosecution to establish

the guilt of the applicant/accused no.5 in the commission of offence, we are of the view that at this stage i.e. pending disposal of appeal, the applicant does not deserve to be released on bail. Accordingly we reject the application.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)