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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION No. 1898 of 2014

Abhijeet Rajendra Sawant

..Applicant.

Vs

The State of Maharashtra

..Respondent.

Mr S.V. Marvadi a/with Amt Balasaheb Thorat for the applicant.

Mrs A.A. Mane, APP for the State.

CORAM : A.R. JOSHI,J

DATE : 20th MARCH, 2015

P.C. :

1) Heard learned Counsel on this repeated bail application.

Also heard the learned APP for the State.

2) Earlier bail application bearing No. 1892 of 2013 was disposed of by this Court and after hearing both the parties at length, at that time, the Court started dictating the order indicating that it was not a case for grant of bail. That time request was made on behalf of the applicant for withdrawal of the application and hence it was allowed to be withdrawn on

24th January, 2014.

3) Present repeated bail application is preferred on only one ground that during the pendency of the investigation, statements of two witnesses were recorded under Section 164 of the Code of Criminal Procedure and there is rather variance in those statements if compared with the earlier statements given by these witnesses under Section 161 of the Code of Criminal Procedure. Much is argued on the said variance and it is stated that there is a change in circumstance as against the present applicant – original accused no.2, inasmuch as in the statements recorded under section 164 of Cr.P.C. these witnesses have given rather a different story as to not this applicant-accused no.2 but his brother co-accused no.3 was the person who instigated their father i.e. accused no.1 to open fire from the fire arm.

4) Some factual position in nut-shell is required to be mentioned in order to ascertain the role of the present applicant as it was not so mentioned in the earlier order while rejecting the earlier bail for the reasons that at the time of dictating the

said earlier order the request was made for withdrawal of the application and hence details were not given though the Court indicated that it was not a case for grant of bail.

5) There was altercation between the present applicant and the witnesses on the night of 24th May, 2013 and there was hot exchange of words and it was on some flimsy grounds of one empty wrapper lifted by the present applicant and at that time the victim and the witnesses asking the applicant not to touch the said wrapper. On this, the applicant became infuriated and gave threats of dire consequences and in fact called his father i.e. original accused no.1 on the spot along with accused no.3, brother of the present applicant. There was some talk between the accused persons and according to the eye-witnesses, initially accused no.3 instigated his father accused no.1 to open fire and as such the fire was opened but the victim escaped. However, still there was instigation by the present applicant to open fire and to do away with the witnesses.

6) On this two more bullets were fired by accused No.1.

7) The offences levelled against the present applicant and other co-accused are punishable under sections 302, 307, 323, 504, 506 and 109 read with section 34 of the Indian Penal Code and also under section 25 (1) (3) of the Arms Act. In the said firing one person died. Though it is strenuously argued on behalf of the applicant regarding the change in circumstance in view of recording of the statement of two witnesses under Section 164 of Cr.P.C., in the considered opinion of this Court, this rather apparent variance do not go to the root of the matter as to the presence and involvement of the present applicant in the offence of murder and as such cannot lead this Court to view the matter in different perspective than that already entertained while rejecting the earlier bail application.

8) Hence, there is no merit in the present application and same is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)