

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

CRIMINAL APPLICATION NO.165 OF 2016

Yogesh Baban Mohite,
Age 23 years, Occu. Agri.,
R/o Jambut, Taluka Sangamner,
District Ahmednagar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr R.K. Temkar, Advocate for applicant
Mr M.M. Nerlikar, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th February 2016

PER COURT

Heard.

2. The applicant is seeking regular bail in Crime No.I-280/2015 registered with Parner Police Station, District Ahmednagar, for the offences punishable under Sections 302, 120-B, 109 read with sec.34 of Indian Penal Code.

3. The case of the prosecution against the present applicant is that the applicant was the member of a group, which has executed deceased Namdeo pursuant to contract of murder given to applicant and his group member, by Deelip Pawar, who was having illicit relation with complainant, Suvarna, wife of Namdeo.

4. After investigation in the matter, the charge-sheet is filed. The applicant was arrested on 14.8.2015.

5. Learned Counsel for the applicant, while trying to make out the case for grant of regular bail, would urge that the entire prosecution case is based on circumstantial evidence. He would then submit that the role attributed to the present applicant is that of member of a group who has executed Namdeo at the behest of said Deelip Pawar.

6. Learned Counsel for applicant then would urge that even if the entire charge-sheet is considered against the present applicant, the probability of his prima facie involvement and taking the case in hand to its logical end, resulting in conviction of the applicant is very brink. He has invited attention of this Court to entire investigation and statements of the witnesses. He would then urge that nothing was seized from the applicant qua the crime in question. It is claimed that Namdeo was not hit by stone or such article by making murderous assault on his head by this applicant.

7. Learned A.P.P. opposed the application and has invited attention of this Court to the panchnama drawn under Section 27 of the Evidence Act wherein, the accused Rahul has shown the spot, where they have accepted the contract money for executing deceased Namdeo. In the said story, as noted under Section 27 of the Evidence Act, it is claimed that Deelip Pawar and the present applicant had been to said accused Rahul for handing over the contract money.

8. In addition, he would place reliance upon the statement of Mahadeo Walunj who has stated about illicit relation of Deelip with the

complainant, Suvana. He would then invited attention of this Court to the statement of Anna Ghule, puncture shop operator, who has stated about payment of Rs.200/- made by the applicant on the next day of the agreement in question towards replacement of tube of the vehicle of the other accused, to whom he has not identified. Admittedly, the accused persons were subjected to identification parade, however, witness Anna Ghule was not called for during the said identification parade.

9. The chain of incident as narrated in the investigation, in view of above referred observations is required to be considered.

10. What is noted in the present case is, except the circumstantial evidence, there is hardly anything to connect the present applicant directly to the crime in question. There is no recovery nor any discovery from the applicant, but for reference in the statement recorded under Section 27 of the Evidence Act, in the matter of discovery of spot of payment of contract money at the behest of accused Rahul, where it is claimed that applicant was accompanied accused Deelip Pawar.

11. In my opinion, as the entire case is based on circumstantial evidence and there is no direct evidence to connect the applicant to the crime in question, he is entitled to be released on bail.

12. As such, Criminal Application stands allowed. The applicant be released on bail in Crime No.I-280/2015 registered with Parner Police

Station, District Ahmednagar, for the offences punishable under Sections 302, 120-B, 109 read with sec.34 of Indian Penal Code, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(N.W. SAMBRE, J.)

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