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

CRIMINAL APPLICATION NO. 2168 OF 2016

Amol s/o Ganesh Kute,
Age: 22 years, Occu: Auto-Rickshaw Driver,
R/o Mangalwara, Hingoli,
Tq. & Dist. Hingoli

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

WITH

CRIMINAL APPLICATION NO. 2185 OF 2016

1. Kiran @ Sonu s/o Vilas Gajalwar,
Age: 22 years, Occu: Business,
R/o Mangalwara, Hingoli,
Tq. & Dist. Hingoli
2. Rajesh @ Raju s/o Gangaram Giri,
Age: 23 years, Occu: Labourer,
R/o Luvkush Nagar, Khatkali area,
Hingoli

..APPLICANTS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr R. N. Dhorde, Senior Advocate i/b Mr V. R. Dhorde, Advocate for applicants;
Mr C. V. Dharurkar, Addl. Public Prosecutor for respondent/State;
Mr V. Y. Bide, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 22nd June, 2016

ORDER :

The applicants in both the applications are seeking their release on regular bail, in connection with Crime No. 176 of 2015, registered with Hingoli (Town) Police Station, Dist. Hingoli, for offences punishable under

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Sections 302, 120(B) and 341 read with Section 34 of the Indian Penal Code.

2. The prosecution story as against present applicants is that deceased Ram Marotrao Chavan was running a sugarcane juice Centre and Hotel in competition with accused Sonu s/o Vilas Gajalwar, who was having contract to run such stores at Hingoli Bus Stand. There was business rivalry and as such, deceased Ram was threatened by the accused persons time and again calling upon to stop his business. It is then claimed that all the accused persons have murdered deceased Ram out of said business rivalry, resulting into registration of crime in question. Accused Amol Ganesh Kute was arrested on 13th September, 2015, accused Sonu @Kiran Vilas Gajalwar was arrested on 9th September, 2016 and so did accused Rajesh Gangaram Giri.

3. The investigation in the mater is complete and chargesheet is already filed.

4. So far as the weapon used in the crime in question i.e. knife, was recovered from the spot, from the body of deceased Ram and no other items were recovered from the applicants-accused or other persons.

5. This Court has released accused Ramesh Sheshrao Bangar on pre-arrest bail, vide order dated 28th October, 2015 in the aforesaid crime. It is then claimed that all the accused persons have hatched a conspiracy to kill

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deceased Ram and in Auto Rickshaw bearing No. MH-38-5897 and accused Amol carried other accused persons for assault and as such, committed crime.

6. The earlier bail application of the present applicants came to be not pressed with liberty to move after receipt of report of Forensic Science Laboratory.

7. Mr Dhorde, Senior Counsel would invite my attention to the order dated 4th February, 2016 passed by this Court in Criminal Application No. 60 of 2016 to that effect.

8. He would then invite attention of this Court to the Forensic Science Laboratory Report dated 12th February, 2016, wherein an opinion has given that the samples qua the clothes of the accused persons and the other material does not depict any blood stains of blood group of deceased Ram. It is also brought to my notice that the knife, though is found to be stained with blood on the blade and handle, however, same is found to be human blood.

9. According to him, the entire case of the prosecution is based on circumstantial evidence and as such, the applicants, who are behind bars since last nine months, are entitled to be released on bail.

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10. Learned Additional Public Prosecutor opposed the applications on the ground that there are sufficient circumstances to infer that the applicants have actively participated in the crime in question. So as to substantiate his contention, he has relied upon the statement of Rahulsinh Kanhayyasin Gahlot recorded on 29th November, 2015, depicting that the accused Amol and Rajesh Giri were friends interse and the weapon i.e. knife was in a Auto-Rickshaw owned by him, which was driven on hire by accused Amol. He would then submit that accused Amol has collected said knife from witness Rahulsinh and there is material to connect applicant to the crime in question. He would also submit that the other accused, namely, Sonu @ Kiran Gajalwar has business rivalry with deceased Ram and there is C.D.R. report in relation to conversation in between accused persons. It is then claimed that accused Rajesh Giri has called accused Amol and as such all of them have participated in crime in question.

11. Learned Additional Public Prosecutor, who is assisted by Mr Bhide, learned Counsel appearing on behalf of complainant, would urge that the material as could be gathered from investigation papers is sufficient to connect the applicants to the crime in question. In addition, learned Additional Public Prosecutor would urge that the blood stains on the knife and its handle were found to be that of human blood, though the classification remained inconclusive. According to him, over all view of the evidence as is collected depicts that applicants have committed the crime in question and as such, bail be denied.

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12. Upon perusal of the investigation papers, it is not in dispute that the entire case revolves around circumstantial evidence. So far as witness Rahulsinh is concerned, his statement came to be recorded on 29th November, 2015 in the present crime as against date of crime i.e. 7th September, 2015. Apart from delay of more than two months in recording his statement, it is required to be noted that, even if presuming that weapon – knife, which was used in crime is same one, still report from Forensic Science Laboratory does not support the case of prosecution.

13. It is then required to be noted that the other accused persons are already released on bail. The report of Forensic Science Laboratory does not support the prosecution to draw an inference that the applicants have actively participated in crime in question. The clothes and other material seized, no way depict that same carry blood stains of blood group of deceased Ram i.e. blood group 'A'. There are no eye witnesses to the incident but for one Avinash Babanrao Gore, panshop holder, who has stated that he has seen present applicants were running from the spot, however, the said material, in my opinion, is not sufficient to infer that the applicants have actively participated in the crime in question.

14. It is also required to be noted that there are no criminal antecedents against applicants and in my opinion, no fruitful purpose will be served in detaining the present applicants, as investigation in the matter is already over and chargesheet is already filed.

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15. In the above background, it will be appropriate to enlarge the applicants on bail. Hence I pass following order :

In the event of arrest of the applicants in both the applications, in connection with Crime No. 176 of 2015, registered with Hingoli (Town) Police Station, Dist. Hingoli, for offences punishable under Sections 302, 120(B) and 341 read with Section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs 15,000/- with one surety in the like amount.

The applicants shall not enter the jurisdiction of the concerned police station for a period of one year from today, but for attending Court proceedings in the matter.

The applicants shall co-operate with the learned Sessions Judge in getting trial decided expeditiously and shall not make any default in appearance.

Default, if any, in appearance of the applicants shall entail the learned Sessions Judge to look into the aspect of cancellation of bail granted by this Court.

Criminal Applications stand allowed in above terms.

(N.W. SAMBRE, J.)

sjk