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

CRIMINAL APPLICATION NO. 2809 OF 2016

Rahul Rajendra Gotise,
Age: 21 years, Occ: Education,
R/o. 3, R.D. Scheme, Janata Market,
Bajarang Chaowk, CIDCO, Nashik.

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr. S.P. Thorat, Advocate for applicant;
Ms. R.P. Gour, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 1st JULY,, 2016

ORDER :

The applicant is seeking regular bail in Crime No. I-127 of 2015 registered on 31/12/2015 at Ghargaon Police Station, Taluka Sangamner, District Ahmednagar, for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code. In the aforesaid crime, there are in all three accused and main role is attributed to accused Pankaj Bhikudas Sonawane, whereas the role attributed to the applicant Rahul Rajendra Gotise is that of accomplice. The applicant was arrested on 04/01/2016.

2. The prosecution case is that the main accused Pankaj Sonawane was having friendship with Santesh Patole, who was having friendship with Manjusha Jadhav. One Sharvari Phadke was in love with

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Amansing and they had planned to elope together and as such, Sharvari Phadke, whose family was well off, had saved amount of Rs.12,00,000/- and odd, and kept the same with one Rakesh Jadhav, who happened to be friend of main accused Pankaj Sonawane. Since Pankaj Sonawane was in need of money, Jadhav paid part of the amount deposited with him by Sharvari Phadke to main accused Pankaj Sonawane as hand loan.

3. Sharvari Phadke and Amansing, who were in love eloped together on 15/11/2015 and decided to move to Allahabad, however, got down at Nagpur and from there, Sharvari Phadke contacted Rakesh Jadhav, employee of her firm, with whom she had parked the amount to render help in getting accommodation. Said Jadhav accordingly informed the main accused Pankaj Sonawane and Pankaj Sonawane, as such, provided accommodation to Amansing and Sharvari Phadke after asking them to come to Pune.

4. Sandesh Patole, who was also friend of main accused Pankaj Sonawane, was in friendship with one Anamik Walke, who has also eloped with one Mansi Mutha and was staying at Osmanabad. Since Sandesh Patole and Pankaj Sonawane were friends, in the above background they decided to keep Anamik Walke and Mansi Mutha with that of Amansing and Sharvari Phadke at Chakan, Pune by providing accommodation, for which Pankaj Sonawane had received additional amount from Amansing and Sharvari Phadke.

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5. It is then claimed that since the accommodation that was provided was not appropriate and behaviour of Pankaj Sonawane with that of Amansing and Sharvari Phadke and also Anamik Walke and Mansi Mutha was not proper, there were differences and they decided to part away company of Pankaj Sonawane, and also demanded refund of amount, which was paid to him. Pankaj Sonawane had already spent said amount on purchase of car. As such, he decided to get rid of Amansing and Sharvari Phadke murdering Amansing and Sharvari Phadke with the help of co-accused Vijay Kachi and present applicant Rahul Gotise.

6. In the above background, the crime in question came to be registered and the applicant was arrested on 04/01/2016.

7. Learned Counsel for the applicant, while trying to make out a case for grant of regular bail, would submit that only discovery against present applicant under section 27 of the Indian Evidence Act is in relation jewellery articles, which is not sufficient to connect the applicant to the crime in question. He would then submit that the investigation in the matter does not depict any direct evidence against the applicant and the prosecution case is based on circumstantial evidence. Learned Counsel for the applicant then would submit that the applicant is behind bars for substantial time and his further detention is not necessary, as the investigation in the matter is complete and charge sheet is already filed. He would then submit that even if it is assumed that the offence in question has been committed, however, the material on record pin points the finger

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towards main accused Pankaj Sonawane and not the applicant in absence of any motive. According to him, the only role attributed to the applicant is that of accomplice, without any direct evidence.

8. So as to substantiate his contention for grant of bail, learned Counsel for the applicant has placed reliance upon the judgment of the Apex Court in the matter of ***State of Kerala vs. Raneef*** reported in ***A.I.R. 2011 SC 340*** and submitted that after the investigation in the matter is over and if the trial has not commenced, the liberty of the applicant guaranteed under Article 21 of the Constitution cannot be jeopardized and he is entitled for bail. He would then rely upon the judgment of Karnataka High Court in the matter of ***Dorai and another vs. State of Karnataka*** reported in ***1994 Cri.L.J. 2987*** so as to canvass that if the applicant-accused has permanent place of abode and is a student, he is entitled for bail. Learned Counsel for the applicant would rely upon the judgment of Apex Court in the matter of ***Sanjay Chandra vs. Central Bureau of Investigation*** reported in ***2012 Cri.L.J. 702*** so as to submit that the object of bail is neither punitive nor preventative and liberty of the individual must be respected. In absence of any good reason, a person cannot be detained and as such, according to him, the applicant be released on bail.

9. Ms. Gour, learned A.P.P. strenuously opposed the prayer on the ground that there is sufficient material available on record to depict that the applicant is prima facie involved in the crime and is not entitled for bail. She would invite my attention to the statements of witnesses, namely,

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Sandesh Vilas Patole, Rakesh Namdeo Jadhav, Anamik Dinkar Walke, Mansi Santosh Mutha and Manjusha Santosh Jadhav speak volumes about *prima facie* involvement of the applicant-accused. She would submit that the investigation depicts that jewellery that was discovered and seized pursuant to the provisions of Section 27 of the Indian Evidence Act from the custody of the applicant on 06/01/2016, was found to have been purchased by deceased Amansing and Sharvari Phadke. In absence of convincing explanation, same speak volumes about involvement of the applicant in the crime in question. According to her, just because the case is based on circumstantial evidence, that does not *ipso-facto* grant right to the applicant to claim bail and she submits that reliance placed on the judgments cited has hardly any application to the present matter and prayed for rejection of the bail application.

10. So as to evaluate the submissions made, it is required to be noted that during the investigation, it is brought on record that deceased Sharvari Phadke and Amansing, eloped together after Sharvari had made in advance the arrangement for expenses, by depositing amount of Rs.12,50,000/- with Rakesh Jadhav, employee of her father's firm. Rakesh Jadhav, during the investigation, was found to be friend of main accused Pankaj Sonawane, to whom the amount to the extent of Rs.4,50,000/- was parted by him. The services of accused Pankaj Sonawane were taken by Rakesh Jadhav, upon request of deceased Sharvari Phadke for the purpose of providing accommodation and protection. Rakesh Jadhav, in his statement, has stated that he had introduced main accused Pankaj Sonawane and Vijay Kachi with Sharvari Phadke and Amansing and also

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paid substantial amount to accused.

11. Witness Sandesh Patole, who was having friendship with Manjusha Jadhav, has in clear terms stated in his statement about parting with company of the deceased Amansing and Sharvari Phadke with that of other friends, namely, Anamik Walke and Mansi Mutha, pursuant to pressure exerted by main accused Pankaj Sonawane. The statements of these witnesses, namely Sandesh Vilas Patole, Anamik Dinkar Walke, Mansi Santosh Mutha and Manjusha Santosh Jadhav speak about last seen theory i.e. Amansing and Sharvari Phadke were in company of Pankaj Sonawane and present applicant was his accomplice. The role as is attributed to and might have been played by the applicant in the crime in question is that of accomplice of Pankaj Sonawane. Accused Pankaj is in the scene of crime from the day one and appears to be interested in the amount which was given to him by Jadhav, deceased Sharvari and Amansing. Role of the applicant as could be noticed from the investigation is that of an accomplice of main accused Pankaj, however, from the statement of all the witnesses, it cannot be inferred that the applicant was interested in the amount, which was deposited with Pankaj by deceased Sharvari. It is then required to be taken note of the fact that present applicant, who is student with no criminal antecedents, has no active participation in the earlier part of the crime i.e. before Sharvari and Amansing went with accused Pankaj. It is only in the last part of the crime the applicant is shown to be an accomplice of main accused when Amansing and Sharvari along with Pankaj parted company of other

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witnesses. Though the applicant appears to be accomplice of Pankaj Sonawane, however, taking cumulative effect of the entire investigation, in my opinion, *prima facie* involvement of the applicant with motive of killing Amansing and Sharvari cannot be inferred, particularly when the applicant does not appear to be in the scene of crime since beginning of the story.

12. In my opinion, in absence of criminal antecedents and the completion of investigation, further detention of the applicant is not necessary as the case is based on last seen together and circumstantial evidence.

13. In my opinion, for the reasons stated hereinabove and in the interest of justice, the application needs to be allowed. Hence, the following order:-

(i) The applicant be released on bail, in connection with Crime No. I-127 of 2015 registered with Ghargaon Police Station, Taluka Sangamner, District Ahmednagar, for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, upon furnishing P.R. bond of Rs.50,000/- with two sureties in the like amount.

(ii) The applicant shall not tamper with the prosecution evidence or influence the prosecution witnesses.

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(iii) The applicant shall attend the trial regularly and co-operate the Court below in its disposal and shall not protract the same by seeking unnecessary adjournments. Learned Sessions Judge is at liberty to proceed ahead for cancellation of bail, if it is noticed that the applicant is not complying with the conditions.

14. The application stands allowed in above terms.

(N.W. SAMBRE, J.)

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