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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL BAIL APPLICATION NO.107 OF 2016
WITH
CRIMINAL APPLICATION NO.162 OF 2016**

Aakash @ Munna Sanjay Gaikwad ..Applicant.

V/s.

State of Maharashtra ..Respondent.

AND

Feroz Inayutlla Shaikh ..Intervenor.

Mr.Balwant Salunkhe i/b. Shashi D.Pandey for the applicant.

Mr.Y.M.Nakhwa, APP for respondent-State.

Mr.Sudam Kale for the intervenor.

CORAM : A.M.BADAR, J.

DATED : 20TH JUNE, 2016

P.C. :-

1. The applicant / accused by this application in Crime No.190/2015 for the offences punishable under section 143, 147, 148, 149 and 302 of the Indian Penal Code registered with Sanghavi Police Station, Pune at the instance of Firoze Inayatulla Shaikh, son of the deceased, is praying for releasing

him on bail.

2. Heard the learned counsel for the applicant / accused. He argued that name of the applicant is not disclosed in the F.I.R. The car was also recovered by police on 27th June, 2015 at the instance of co-accused Ramesh @ Pappa. He argued that there is no prima facie material to infer the complicity of the present applicant in the crime in question.

3. The learned APP opposed the application and contended that the CDR collected by the Investigating Officer and placed on record by way of supplementary charge-sheet goes to show that the present applicant was in constant touch with the accused persons. The applicant had absconded for more than 60 days after the incident.

4. I have also heard the learned counsel appearing for the informant. He argued that by hiring contract killers, the father of informant was killed and the CDR shows complicity of the applicant.

5. Perused the F.I.R. as well as charge-sheet. The incident in question happened at Shalimar Saloon owned by Issac Amin Shaikh. He had informed informant Firoze about the murderous assault on Inayatulla Shaikh. Post mortem report shows homicidal death. F.I.R. lodged by Firoze shows that he is not an eye witness to the incident in question. He apprehended that Qayum Shaikh and Shamsuddin Shaikh might have killed his father. Statement of Issac Amin Shaikh shows that in the night hours of 26th June, 2015 Taufiq Shabbir Shaikh and his four associates killed Inayatulla Shaikh by assaulting him by means of koyta (sickle). Statement of Issac Amin Shaikh shows that after the incident, he was frightened and sat inside his saloon itself. As such, prima facie his statement does not show that he has witnessed the assailants fleeing in a car owned by the present applicant. Aakash @ Munna Gaikwad.

6. Statement of Bhushan Dagde shows that one Zen Car came, five to six persons alighted from that car and assaulted Inayatulla Shaikh. He is not naming any of the assailants.

7. Car used in the commission of crime is allegedly recovered on 27th June, 2015 itself at the instance of accused Ramesh @ Pappa. Nothing is pointed out to infer that the seized car was either owned or possessed by the present applicant at the time of the incident in question. At the instance of the present applicant, clothes are shown to have been recovered. Perusal of recovery panchanama shows that those clothes were not having stains of blood. Though it is attempted to show that the applicant was knowing the place where the car was parked much earlier before recording of this memorandum statement, police were knowing the place where the car was alleged parked.

8. The applicant / accused was arrested on 28th August, 2015. Nothing is pointed in order to show that during all this period, police tried to search him but he was not found present at his normal place of residence. Even otherwise, post event conduct varies from person to person.

9. Considering this nature of evidence against the present applicant though the offence alleged is very serious, his pre-trial detention is not warranted. Hence the order :-

- (i) The application is allowed;
- (ii) The applicant / accused in Crime No.190/2015 for the offences punishable under section 143, 147, 148, 149 and 302 of the Indian Penal Code registered with Sanghavi Police Station, Pune be released on bail on his executing P.R. Bond in the sum of Rs.15,000/- with one or more surety in the like amount;
- (iii) The applicant / accused shall inform his latest place of residence and cell number after his release and continue to inform the change in residence or cell number, if any, from time to time to the Investigating Officer of the concerned police station and on filing the charge-sheet to the concerned Court;
- (iv) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (v) The applicant / accused shall not commit an offence similar to the offence of which he is accused or

suspected of commission;

(vi) The application is disposed of accordingly;

(vii) In view of the disposal of the main application, all pending applications, if any, are disposed of.

(A.M.BADAR, J.)