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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL BAIL APPLICATION NO.271 OF 2016
WITH
CRIMINAL APPLICATION NO.175 OF 2016**

Laxman Dattatraya Jundale	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

AND

Prakash Mallikarjun Jundhale	..Intervenor.
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Mr.A.P.Mundargi, Senior Advocate i/b. S.S. Chaudhari for the applicant.

Mrs.Veera Shinde, APP for respondent-State.

Mr.M.S.Mohite i/b. V.B. Shivarkar for the intervenor.

CORAM : A.M.BADAR, J.

DATED : 29TH JUNE, 2016

P.C. :-

1. The applicant / accused in Crime No.166/2015 for offences punishable under sections 302, 120B read with 34 of the Indian Penal Code and section 3 read with 25 of the Arms Act registered with Mangalwedha Police Station, Solapur by this application is seeking his release on bail.

2. Heard the learned senior counsel appearing for the applicant / accused. By drawing my attention to the statement of Santosh Balikshe, the learned senior counsel submitted that this witness had only seen assailants fleeing after the incident and in his supplementary statement, he has stated that he has identified three of the accused persons. The learned senior counsel further argued that on the basis of news item in the daily newspaper, informant Prakash Jundhale came up with a supplementary statement attributing motive to the present applicant. The learned senior counsel submitted that political and professional rivalry is alleged to be the motive in this case based on circumstantial evidence. The learned senior counsel submitted that this story of attributing motive is coming up after twenty days. The learned senior counsel pointed out that deceased Rameshwar Jundhale was having evil eye on many women, as seen from the charge-sheet and as such, in every probability he was murdered out of that habit by aggrieved person. The learned senior counsel submitted that except seizure of one sim-card from accused No.1 Sikandar Mulla, there is no panchanama regarding seizure of two other sim-cards from him and

evidence regarding calls exchanged between accused No.1 Sikandar Mulla and the present applicant is totally unreliable. The learned senior counsel argued that in a cylostyled manner, affidavits of witnesses were prepared and then material particulars in those affidavits are scratched to fill in different particulars. The learned senior counsel pointed out affidavit of Mallikarjun s/o. Vithoba to demonstrate that attempt is made to attribute cell phone No.9960282162 to accused No.1 Sikandar Mulla for showing connection of this accused with the present applicant. The learned senior counsel pointed out that subsequent portion of the affidavit of Mallikarjun s/o. Vithoba shows that the cell number is 9008350908 and the Investigating Officer has not clarified this aspect.

3. The learned APP opposed the application by contending that offence is serious and the case is based on circumstantial evidence. He argued that statement of the witness who have filed affidavits are recorded by the Investigating Officer.

4. I have also heard the learned counsel appearing for

the informant. He argued that this is a case of hiring contract killer from other State to eliminate a rival. The learned counsel further argued that the charge-sheet shows that in all three sim-cards were seized from accused No.1 Sikandar Mulla, a contract killer. The learned counsel for the informant further argued that Call Detail Record would show that the present applicant was in constant touch with accused No.1 Sikandar Mulla, who hails from Karnataka and whose presence at the time of incident is also established from the the Call Detail Record.

5. I have carefully gone through the entire charge-sheet with the able assistance of the learned counsel appearing for the parties. The incident of murdering Rameshwar Bapu Jundhale occurred on 26th June, 2015. He died because of gun-shot injury and prima facie it seems to be a homicidal death.

6. The F.I.R. came to be lodged by a relative of the deceased namely, Prakash Jundhale on 27th June, 2016. It is against unknown assailants. The charge-sheet shows that Santosh Balikshe had seen the assailants - four in number -

fleeing from the spot on two motor cycles. Subsequently, he had identified three of them, including accused No.1 Sikandar Mulla.

7. During the course of investigation, supplementary statement of informant Prakash Jundhale came to be recorded on 17th July, 2015 which attributes motive to present applicant Laxman Jundhale in the crime in question. As per the version of informant Prakash in his supplementary statement, he as well as the applicant Laxman were working for a group headed by Prashant Paricharak in the election to the Legislature Assembly held in the year 2014. At that time, Rameshwar Jundhale (since deceased) was working for a local candidate named Samadhan Avtade. Prakash Jundhale further disclosed in his supplementary statement that the present applicant along with two partners had purchased Poklain machine and deceased Rameshwar was also doing similar business. Subsequently, as averred by Prakash, partners of the present applicant joined the group of Rameshwar Jundhale (since deceased) because of differences with the present applicant. According to the prosecution case, deceased was causing trouble to the present applicant in his political career

as well as in his professional front and, therefore, the present applicant had hired contract killer from Karnataka to eliminate Rameshwar Jundhale.

8. Evidence against the present applicant is mainly comprising of telephonic calls exchanged between him and accused No.1 Sikandar Mulla, who is resident of Karnataka. Other accused also seems to be resident of Karnataka. According to the prosecution case, the present applicant had hatched a conspiracy to eliminate the deceased and for that purpose, he had paid an amount of Rs.3 lacs to the contract killer.

9. The charge-sheet shows that sim-cards came to be seized from accused No.1 Sikandar Mulla at the time of his arrest under the panchanama and four calls were exchanged between the said accused No.1 Sikandar Mulla and the present applicant just before four days of the incident. According to the prosecution case, even on the day of the incident, there were several telephone calls between the present applicant and accused No.1 Sikandar Mulla. The prosecution is contending that this contact with the present

applicant and accused No.1 Sikandar Mulla was through cell-phone No.9980282162 which was with accused No.1 Sikandar Mulla at the relevant time. The prosecution has recorded the statement of Mallikarjun s/o. Vithoba which prima facie shows that he has lost sim-card of this cell-number According to the prosecution case, a person in possession of sim-card i.e. accused No.1 Sikandar Mulla was very much the present on the spot of incident as per the tower location.

10. It is seen that rest of the accused persons are from Karnataka having no relations with deceased Rameshwar. *Prima facie*, there appears to be no reason for the other accused to eliminate deceased Rameshwar Jundhale, but for the alleged conspiracy and contract given to them by the present applicant / accused. It is well settled that generally no direct evidence is available for the charge of conspiracy and one has to examine the attending circumstances to infer conspiracy. In the case in hand, prima facie, there was motive with the present applicant and he appears to be in constant contact with accused No.1 Sikandar Mulla even prior to and at the time of the murder of deceased Rameshwar Jundhale. Therefore, no case for bail is made out. The application is

rejected.

11. Needless to mention that these observations are prima facie observations having no bearing on the trial.

12. All pending applications, if any, are disposed of in view of the disposal of the main application.

(A.M.BADAR, J.)