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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.575 OF 2016

Vikrant @ Vicky Nagesh Misar ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Shailesh D. Chavan for the applicant.

Mrs.Veera Shinde, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 4TH JULY, 2016

P.C. :-

1. The applicant / accused in Crime No.96/2015 for offence punishable under section 302 read with 34 of the Indian Penal Code, section 4(25) of the Arms Act, section 37(1) read with 135 of the Maharashtra Police Act and sections 3(1), (I), (3) (4) of the Maharashtra Control of Organized Crimes Act, 1999 (MCOC Act for the sake of brevity) registered with Bhosari Police Station, District Pune by this application is praying for releasing him on bail.

2. Heard the learned counsel for the applicant and as

well as the learned APP.

3. The learned counsel for the applicant argued that except statement of witness Jotam Phartale recorded after about three months from the date of incident, there is no iota of evidence to connect the applicant with the crime in question. He further placed reliance on the order passed by this Court on 11th December, 2015 in Anticipatory Bail Application No.1642 of 2015 and particularly para 6 thereof. This Court by the said order has been pleased to release co-accused Sham Jalinder Gaikwad with a reasoning that apart from statement of Jotam Phartale, there is no material to implicate the applicant therein was involved in the crime in question. The learned counsel for the applicant further pointed out that this Court has further held that the provisions of MCOC Act though applied, there is no prima facie material to show that the applicant has any criminal antecedents or that he is a member of a Gang headed by Mahesh Dongare.

4. The learned APP opposed the application by contending that the provisions of MOCO Act are applied after getting necessary approval and the charge-sheet is filed after

taking sanction. The learned APP further argued that the order of this Court on which reliance is placed is already challenged before the Hon'ble Supreme Court and the matter is subjudice. The learned APP further pointed out that Competent Officer has recorded the confession of accused persons which shows the complicity of the present applicant in the crime in question.

5. Perused the charge-sheet. The F.I.R. came to be lodged by Ramesh Waghmare – brother of Ganesh Waghmare. According to the prosecution case, Ganesh had been done to death by the accused persons, including the applicant. The post mortem report prima facie shows that Ganesh Waghmare died a homicidal death. During the course of investigation on 15th June, 2015, the prosecution has recorded statement of eye witness Jotam Phartale. His statement shows that after witnessing the gruesome murder of Ganesh Waghmare, he became frightened and left his usual place of residence to take shelter at the house of his brother-in-law Ankush Sandbhor at Khed, Pune. Statement of Jotam Phartale further shows that he returned to his usual place of residence at Bhosari after two months and that too when he came to know

that accused persons are already arrested by police. In the wake of these recitals in the statement of Jotam Phartale, his version at this pre-trial stage needs to be appreciated.

6. The statement of witnesses goes to show that there was enmity between gangs headed by main accused Dhongare and the deceased Ganesh Waghmare. Statement of Jotam Phartale recorded on 15th June, 2016 shows that Ganesh Waghmare was accosted by Mahesh Dongare and his associates. He was being questioned as to where is "Jitya". On his refusal to disclose whereabouts of "Jitya", as stated by Jotam Phartale, main accused Mahesh Dongare gave blow of koyta on the head of Ganesh Waghmare. Thereafter, Ganesh Waghmare was assaulted by co-accused, including the present applicant Vikrant Misar by koytas and swords. Statement of Jotam Phartale further shows that Amol Salve then smashed the head of Ganesh Waghmare by means of a big stone. Considering the mode and manner in which the deceased was done to death by using sharp edged weapons, at this stage, one cannot suspect the version of Jotam Phartale.

7. Prima facie it is seen that with prior approval of the competent officer under Maharashtra Control of Organized Crimes Act, 1999, the information came to be recorded was recorded and charge-sheet is filed after due sanction. Confessional statement of accused persons are recorded by the Deputy Commissioner of Police, Zone-I, Pune wherein the role of the present applicant is reflected. The learned counsel for the applicant submitted that those confessions are retracted subsequently. Its effect will be considered at the trial. Similarly, the consequence of the delay in recording the statement is required to be decided at the trial by cross examining the witness as well as the Investigating Officer.

8. In this view of the matter, no case is made out for grant of bail. Hence the order.

The application is rejected.

(A.M.BADAR, J.)