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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 595 OF 2016

Hrishikesh @ Montu Sunil Salunke ..Applicant.

Vs

The State of Maharashtra ..Respondent.

Mr Tariq Khan Advocate for the applicant.

Mrs Rutuja Ambekar, APP for the State.

PI. D.J. Pagare, Vinoba Bhave Nagar P.S.

CORAM :- A.S.GADKARI, J.

DATED :- 27th SEPTEMBER, 2016.

PC.

1) This is an application under section 439 of the Code of Criminal Procedure, 1973 for bail in C.R. No. 26/2015 registered with Vinoba Bhave Nagar Police Station, Mumbai under sections 143, 144, 147, 148, 149, 323, 324, 325, 307 read with 34 of the Indian Penal Code and under Sections 37 (3), 135 of the Maharashtra Police Act.

2) This is the second bail application preferred by the applicant. The first bail application preferred by the

applicant was dismissed, as withdrawn by this Court by its order dated 21/1/2016, by granting liberty to the applicant to file a fresh bail application before the Trial Court if the trial pertaining to CR No. 26/2015 registered with Vinoba Bhave Nagar Police Station does not commence within a period of one year from the date of said order. Though the said period of one year has not come to an end, the applicant has preferred the present application on the ground that the earlier learned counsel who represented the applicant and argued the matter on 21/1/2016 did not properly argue the same and the applicant herein did not give instructions to him to withdraw the said application. It was urged before this Court that an opportunity of being heard to the applicant may be given. The said facts are elaborately recorded in the order dated 9/8/2016. It is already stated that it is the settled position of law that the change of counsel does not

make any substantive change in circumstances of the case for hearing the matter afresh after the earlier bail application was dismissed. The practice adopted by the applicant has been deprecated. However, as a grievance was made by the applicant that the earlier counsel did not argue the matter properly and certain vital aspects related to the present application were not pointed out to the Court, the applicant was granted an opportunity of being heard in the present application through another counsel.

3) Heard the learned counsel for the applicant at length, the learned APP and I have also perused the entire copy of the charge-sheet annexed to the present application.

4) The first information report is lodged by Shri Deendayal V. Rai. It is stated in the said report that the first informant is a social activist. That he knows various persons residing in the jurisdiction of Vinoba

Bhave Nagar Police Station. He is also a witness in certain offences registered with the said police station. That on 18/1/2015 at about 12:00 noon he was having tea at a stall. That Shri Shivlal Yadav, Indrajeet Yadav and Jogendra Singh were accompanying him. At that time, Sudhir Salunke (accused no.1) a resident of Gaurishankar Nagar along with other accused persons came at the spot. The said Sudhir Salunke threatened the complainant and told him that today he will not leave him and immediately took out one razor from his pocket and tried to inflict a blow on the neck of the complainant. The complainant was successful in dodging the said blow. At that time, the applicant whose nickname is "Montu" took out a chopper and gave a blow with the same on the person of the complainant. The other accused persons also assaulted the complainant/informant with weapons and fist blows. The accused persons thereafter threatened the

complainant and other persons who had gathered at the spot and left the scene of offence. In the first information report, itself, the applicant has specifically and categorically stated that Mukesh Salunke and other persons accompanying him were having criminal background and he knows all the persons. After lodging of the first information report the police conducted the investigation. During the course of investigation, the police collected injury certificate of the complainant from the Sion Hospital, Mumbai. That the applicant came to be arrested on 20/6/2015 and when he was in police custody a chopper allegedly used in the present crime has been recovered at his instance under section 27 of the Evidence Act. After completion of investigation, the police have submitted the charge-sheet.

5) The learned counsel for the applicant submitted that in the first information report the name of Montu

is mentioned by the complainant. That the police did not conduct any test identification parade to establish the identity of the applicant as the same Montu. He further submitted that the police have already filed the charge-sheet. That the applicant is in jail since 20/6/2015 and no purpose will be served by further detaining the applicant in jail. He therefore prayed that the applicant may be released on bail.

6) Per contra, the learned APP vehemently opposed the application and submitted that there is no substantive change in circumstance than after passing of the first order dated 21/1/2016. She submitted that the complainant was knowing the applicant as Montu and has given his specific name along with his role in the first information report. She further submitted that there are antecedents at the discredit of the applicant and if the applicant is released on bail there is every possibility that the applicant may tamper with the

evidence and/or threaten the prosecution witnesses. She, therefore, prayed that the present application may be dismissed.

7) At the out set, it is to be noted here that the first informant Shri Deendayal V. Rai in the report dated 18/1/2015 has categorically attributed the role of assault by a chopper to the applicant. He has stated the name of the applicant as “Montu” as he was knowing the applicant by his nickname. The record further reveals that during the course of investigation a chopper which is allegedly used in the present crime has been recovered at the instance of the applicant. The injury certificate and/or other medical documents duly corroborate the version of the first informant. The first informant has received four injuries. The informant has also received two fractures to his bones. The record further reveals that the first informant has received grievous injuries on his person. Prima facie it appears

that the assault committed by the applicant along with other accused persons on the first informant was a ghastly attack.

8) Apart from the facts mentioned herein above, the learned APP submitted that the applicant is also an accused in CR No. 177/2011 registered with the same police station and when he was on bail in the said crime, has committed the present crime. She further, on instructions, submitted that the present crime is committed on 18/1/2015 and the applicant was arrested on 20/6/2015. That in the intervening period the applicant was absconding. That during the said intervening period the applicant has committed another crime bearing CR No.84/2015 under section 324 of the IPC within the jurisdiction of Pune City Police Station in district Pune. It is further to be noted here that if the applicant is released on bail, the applicant will take revenge against the first informant

and the other witnesses in the present crime.

9) After taking into consideration the facts of the present case and the propensity of the applicant towards the criminality, according to me, this is not a fit case to release the applicant on bail. The application being devoid of any merits, is accordingly dismissed.

(A.S. GADKARI, J.)