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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.686 OF 2016

Mandar Vankudre	 Applicant
V/s.	
The State of Maharashtra	 Respondent

Mr. Aabad Ponda, a/w Mr. Rushabh Sheth a/w Mr. Rajesh Dubey a/w Ms. Pooja Batra, I/by M/s Bodhanwalla & Co. for the Applicant.
Mrs. Veera Shinde, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 28th JULY, 2016.

P.C. :

1. The applicant/accused in crime No.248 of 2014, for the offence punishable under Section 302, 307, 143, 248, 149 of the Indian Penal Code, under Section 37(1) of the Bombay Police Act and under Section 4(25) of the Arms Act, registered with Vishrambag Police Station, Pune, by this application is seeking his release on bail.

2. Heard the learned counsel appearing for the applicant/accused. The learned counsel for the applicant, by drawing my attention to the version of eye witnesses reflected in their statements recorded under Section 161 of Code of Criminal Procedure, argued that the present applicant is stated to be holding Koyta, so also accused Suraj

Pingale and Sunil Gaikwad. The learned counsel argued that the case of Suraj Pingale is exactly identical with that of the present applicant and therefore, on the ground of parity, the present applicant is entitled for bail. It is reported that the learned Additional Sessions Judge has released applicants Suraj Pingale and Sunil Gaikwad on bail.

3. The learned APP opposed the application by submitting that the offence alleged is serious and complicity of the applicant in crime in question is well established.

4. The perusal of chargesheet, so also the order below Exh.12 in Sessions Case No.24 of 2015, whereby applicant therein i.e. accused Suraj Pingale has been enlarged on bail. In paragraph No.5 of the order, granting bail to co-accused Suraj, the learned Additional Sessions Judge, Pune, has observed that there was previous enmity between Om Kadam (since deceased) and co-accused Suraj Pingale. With this the learned Additional Sessions Judge jumped to the conclusion that there is no prima facie case against applicant (Suraj Pingale) before him, and held that no prima facie case against co-accused Suraj Pingle was made out by the prosecution case.

5. Perusal of the chargesheet reveals that the Investigator has recorded statements of four eye witnesses to the incident in question wherein Om Kadam was done to death by the applicant and co-accused.

At the time of incident Om Kadam was accompanied by Jaggu @ Chettan Thopate. Jaggu @ Chetan Thopate in his statement recorded under Section 161 of Code of Criminal Procedure has categorically stated that the present applicant and co-accused namely Suraj Pingale and Sunil Gaikwad had assaulted Om Kadam by means of Koytas. Similar are the statements of Yogesh Ghorpade, Suresh Kadam and Sumit Sonawane. Congruous statements of eye witnesses go to show that the deceased was done to death in brutal manner by assaulting him by means of Koytas. The postmortem report goes to show that the dead body was having in all 36 antemortem injuries. I fail to understand as to what the learned Additional Sessions Judge meant by observing that no prima facie case is made out against Suraj Pingale. The discretion is left to the prosecution i.e. the State as to whether to apply for cancellation of bail granted to Suraj Pingale or not. Suffice to state that judgment in **Maslati -vs- State of Uttar Pradesh**, reported in – **A.I.R. 1965 SC 202**, takes care of liability of each member of the unlawful assembly in the crime in question. In the case in hand active role is attributed to applicant Mandar Vankudre in assaulting the deceased by means of Koyta. In this view of the matter, no case for bail is made out. The Application is rejected.

[A. M. BADAR, J.]