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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 717 OF 2016

Rajesh Jogesh Roy ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr. S. V. Kotwal, for the applicant.

Mr. Deepak Thakare, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 2nd AUGUST, 2016

P.C. :-

1. The applicant/accused in Crime No.33 of 2014, registered with Bhosari M.I.D.C. Police Station, Pune, for the offence punishable under Sections 363, 364, 365, 302, 201, 404, 411, read with 34 of the Indian Penal Code, at the instance of Dattatray Zende on 18.2.2016, by this application is seeking bail after filing of chargesheet against him.

2. Heard the learned counsel appearing for the applicant/accused. In his submission, considering the nature of evidence available against the present applicant, he is entitled for bail. The learned counsel submitted that the

investigator had recorded statements of four eye witnesses, but after arrest of the present applicant, test identification parade was not conducted. The evidence regarding recovery of ATM card of the deceased at the instance of the present applicant is sketchy and recovery of gold ingot at the instance of present applicant does not connect him with the crime in question.

3. The learned APP opposed the application by submitting that at the time of trial of alleged offence, identity of the applicant can be established from concerned eye witnesses. The learned APP further argued that recovery of ATM card at the instance of the present applicant connects him to the crime in question and evidence of father of the deceased corroborates this piece of evidence.

4. Perused the chargesheet. The crime in question is registered at the instance of father of deceased Kishor Dattatray Zende. F.I.R. is lodged by Dattatray, on the basis of information received by him. However, the incident of abducting deceased Kishor Zende is witnessed by Nagesh Anjayya Shetty, Ambadas Vitthal Waghmare, Chhatara Ram Jadhav and Satish Tekale. Their consistent version before the Investigator reveals that on 17.2.2104, at about 9.45 p.m.

Kishor Zende, and Nagesh Shetty were chitchatting at the gallery of grocery shop of Chhatara Ram Choudhary. Ambadash Waghmare was also present there. At that time, Nagesh was pushed by two persons while crossing him. Angry Nagesh then gave push, one of those two persons causing his fall and breaking bottles of beer which were carried by him. Because of this act of Nagesh, two or three persons sitting in car of Ritz make rushed at Nagesh. Nagesh managed to escape. However, those persons abducted Kishor Zende in the car. Subsequently dead body of Kishor Zende was found in the forest at Charoli Nirgudi road. The postmortem report prima facie shows Kishor died homicidal death.

5. The applicant/accused was arrested on 15.07.2014. There were four witnesses, who had seen the incident of abducting Kishor, who was found dead soon after his abduction. Apart from the present applicant, two juveniles in conflict with law namely Nikhil Deokar and Ujjawal Pansare were arrested in this crime. They were subjected to test identification parade. Why the present applicant who was arrested subsequently was not subjected to test identification parade is a question which remained unanswered in the record of investigation. The perusal of memorandum of

statement of the present applicant shows that the present applicant had not confessed about spot where the ATM card of the deceased was allegedly hidden. His memorandum statement only reflects his willingness to discovery of ATM card. Ultimately that ATM card is stated to have been recovered from the cattle shed of Prashant Balasaheb Landage located at Gavali Nagar, Telco Road, Bhosari, which appears to be an open space.

6. Then there is recovery of ingot of gold at the instance of present applicant.

7. It is not in dispute that this is the only evidence available against the present applicant to connect him in the crime in question. Considering this nature of evidence against the present applicant and after filing chargesheet, his pre-trial detention is not warranted and therefore, the following order.

Order

1. The application is allowed.
2. The applicant arrested in connection with above offence, be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- and on his furnishing one or two sureties in the the aggregate sum of rs.50,000/-.
3. The applicant shall not, directly or indirectly, make any inducement, threat or promise

to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

4. The applicant shall attend the trial scrupulously and shall co-operate the trial Court in expeditious disposal of the case.

5. The applicant shall not tamper with the prosecution evidence in any manner.

(A.M.BADAR, J.)