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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.758 OF 2016

Shivkumar Bharat Yadav	 Applicant
V/s.	
The State of Maharashtra	 Respondent

Mr. Harinath R. Sharma, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 28th JULY, 2016.

P.C. :

1. The applicant/accused, in crime No.I-130 of 2014, registered with Karad City Police Station, Karad, for the offence punishable under Sections 396, 120B read with 34 of the Indian Penal Code, by this application, is praying for releasing him on bail.
2. Heard the learned counsel appearing for the applicant/accused. He, by drawing my attention to statements of Vaishali, Nansaheb and Raghunath, argued that this is no tangible evidence apart from evidence of recovery against applicant/accused in this offence of dacoity with murder.
3. The learned APP opposed the application by submitting that

statement of Raghunath Karande shows that applicant was well aware of the fact that an amount of Rs.34 lacs was kept with the deceased by Raghunath for safe custody and that Yogesh son of Raghunath had left for Nallasopara, but the present applicant stayed at Malkapur for two more days in order to implement plan of looting money with the help of co-accused.

4. Perused the chargesheet. According to prosecution case, Gunwant Kushte is tenant at the house of Nanasaheb Sawant at Malkapur. It is the prosecution case that Yogesh Karande was in the business of real estate at Nallasopara. He had earned an amount of Rs.34 lacs in that business and at the instance of his father Raghunath, same was kept at the tenanted room of Gunwant Kushte. The present applicant had helped Raghunath Karande to carry that amount and to keep the same in the tenanted premises in occupation of Gunwant Kushte. According to prosecution case on 10.4.2014, 5 to 6 accused persons went to the tenanted room of Gunwant Kushte with mattress, caused his death and escaped with amount of Rs.34 lacs. Vaishali Sawant, who witnessed 5 to 6 persons approached room of Gunwant Kushte, disclosed this fact to her brother-in-law Nanasaheb Sawant, who is landlord of Gunwant Kushte. Nanasaheb, then went to the spot. He saw those persons going away from the spot. The informant also saw Gunwant

Kushte lying dead in the tenanted room.

5. The postmortem report shows that Gunwant died homicidal death on 10.4.2016.

6. During the course of investigation, an amount of Rs.4 lacs came to be recovered on the basis of confessional statement of the present applicant. The statement of Raghunath Karande shows that his son Yogesh came to Malkapur with the present applicant Shivkumar Yadav. Though his son left on 7.4.2014, Shivkumar Yadav stayed at the house of Raghunath upto 9.4.2014 and thereafter left Malkapur at 11.00 a.m. on 10.4.2014. Prima facie, it is seen that the present applicant Shivkumar Yadav was not present at Malkapur on 10.4.2016 when the incident alleged took place.

7. Even if it is assumed that the present applicant was at Malkapur after leaving house of Raghunath Karande, it was incumbent on the part of prosecution to conduct test identification parade after apprehending accused as according to prosecution case, Nanasaheb and his sister in-law Vaishali had seen accused persons in their premises. The learned APP states that identification parade is not conducted. Section 27 of the Evidence Act makes discovery of fact relevant if it could be connected to the crime in question. Prima facie there is no evidence to show that recovered amount of Rs. 4 lacs is from amount of Rs.34 lacs,

which was looted from the tenanted premises of deceased Gunwant Kusht after commission of his murder.

8. Except this, there is no other evidence to connect the applicant to crime in question and the learned APP does not dispute this fact. In this view of the matter, after conclusion of investigation, pre-trial detention of the applicant is not warranted. Hence following order.

Order

- I) The application is allowed.
- II) The applicant arrested in connection with above offence, be released on bail on his executing P.R. Bond in the sum of Rs.30,000/- and on his furnishing one or two sureties in the aggregate amount of Rs.30,000/-.
- III) 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.
- IV) The applicant shall attend the trial scrupulously and shall co-operate the trial Court in expeditious disposal of the case.
- V) The applicant shall not tamper with the prosecution evidence in any manner.

[A. M. BADAR, J.]