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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1021 OF 2016

Pratik Pandit Sangale	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Abhijeet A.Desai with Ms.Vrishali L.Maindad for the applicant.

Mrs.R.M.Gadhvi, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 23RD JUNE, 2016

P.C. :-

1. The applicant / accused in Crime No.305/2014 for the offences punishable under section 302, 307, 143, 147, 148, 149, 120B and 153A of the Indian Penal Code registered with Hadpsar Police Station, Pune by this application is seeking bail on completion of investigation.

2. Heard the learned counsel for the applicant. He argued that evidence of identification parade held after two months from the arrest of the applicant is too weak. Two

witnesses who were present at the same time at two different places are shown to have identified the applicant / accused. He further argued that Nitin Wagh is not an eye witness to the incident in question. Even the F.I.R. shows that after arrival of the patrolling vehicle of the police, the assailants fled away from the spot. Another incident, according to the learned counsel for the applicant, occurred at a different place at the same time. As such, there is no possibility of the present applicant being present at another spot of incident. He further argued the C.A. report does not show any blood on articles seized at the instance of the present applicant.

3. As against this, the learned APP opposed the application by contending that eye witnesses have identified the present applicant as the assailant. She further argued that weapon of offence was recovered at the instance of the applicant and police constable Nitin Wagh was knowing the applicant.

4. Perused the charge-sheet. The incident in question happened on 2nd June, 2016 wherein Shaikh Mohsin Mohammed Sadiq - the brother of the informant died a

homicidal death. Informant Shaikh Mobin Mohammed Sadiq is not an eye witness to the incident in question.

5. Perusal of the papers of investigation, including the F.I.R. shows that on 2nd June, 2014, first informant Shaikh Mobin Mohammed Sadiq had left the company of his brother Shaikh Mohsin Mohammed Sadiq (since deceased) after Namaaz. It is seen that when Shaikh Mohsin accompanied by his friend Riyaz Ahmed were proceeding on their motor cycle, near Jagtap Classes at Satav Plot, they were assaulted by a mob of 20 persons. This place appears to be also near a grocery shop. In the assault, Shaikh Mohsin died.

6. The papers of investigation show that witness Amin Haroon Shaikh was injured at about the same time but at a different place. His statement shows that he alighted from the S.T. bus at about 9.10 p.m. at Siddheshwar Petrol Pump and thereafter by walking he was proceeding towards his house. Near Unnati Nagar, he was chased by 15 to 20 persons and he took shelter in the shop named Soni Services Centre. As per statement of Amin Haroon Shaikh, he was assaulted inside the shop by four persons. Both the incidents

are stated to happened at about 9.15 p.m. on 2nd June, 2014.

7. Noor Ahmed Akbar Dalvai is stated to be an eye witness to the assault on deceased Shaikh Mohsin. This incident allegedly took place near Jagtap Classes and grocery shop at Satav Plot.

8. The present / applicant accused came to be arrested on 8th June, 2014. Identification parade was held by the Investigating Officer on 5th August, 2014 i.e. after about two months. There is nothing on record to show that the applicant was taken to the Court of J.M.F.C. for the purpose of remand in veiled condition. In the wake of this factual backdrop, the memorandum of identification parade shows that witnesses Noor Ahmed Dalvi and Amin Haroon Shaikh have identified the present applicant. When the incident alleged in the prosecution case took place at two different places at one and the same time, how these two witnesses who had allegedly witnessed two separate incidents at the same time, identified the present applicant as the assailant, is an aspect which does not get a clarification from the papers of investigation. This is the nature of evidence of identification

against the present applicant.

9. So far as witness Nitin Wagh is concerned, he has not seen the assault but he claims to have seen the applicant riding on two wheeler vehicle proceeding in group with others.

10. The F.I.R. shows that after assaulting Shaikh Mohsin at about 9.15 p.m. on 2nd June 2014 near the grocery shop at Satav Plot area, on arrival of the police patrolling vehicle, the assailants fled away from the spot. How the same assailants could assault another injured witness at the same time at some other place is again a matter which could not get any explanation from the papers of investigation.

11. Though allegedly hockey stick as well as shirt and pant of the present applicant are recovered at his instance, nothing incriminating can be found therein in the forensic examination.

12. Considering this nature of evidence against the applicant and as four other accused persons with somewhat similar role are released on bail by this Court, the applicant is

also entitled to be released on bail. The trial will take its own time, as such, pre-trial detention of the applicant is not necessary. Hence the order:-

- (i) The applicant / accused in Crime No.305/2014 for the offences punishable under section 302, 307, 143, 147, 148, 149, 120B and 153A of the Indian Penal Code registered with Hadpsar Police Station, Pune be released on bail on his executing P.R. Bond in the sum of Rs.10,000/- with one surety in the like amount;
- (ii) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;
- (iii) The applicant / accused shall inform his latest place of residence and cell number after his release and continue to inform the change in residence or cell number, if any, from time to time to the Investigating Officer of the

concerned police station and on filing the charge-sheet to the concerned Court;

- (iv) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (v) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of the commission;
- (vi) The application is disposed of accordingly.

(A.M.BADAR, J.)