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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1103 OF 2016

Suraj Ramharak Jaiswal	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Satyavrat Joshi for the applicant.

Mr.Deepak Thakery, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 19TH JULY, 2016

P.C. :-

1. The applicant / accused in Crime No.400/2016 for the offences punishable under section 143, 147, 148, 149, 307, 323, 504 read with 34 of the Indian Penal Code, section 37(1) read with 135 of the Maharashtra Police Act as well as under section 4(25) of the Arms Act registered with Pimpri Police Station, Pune at the instance of applicant Santosh Dhotre by this application is praying for releasing him on bail.

2. Heard the learned counsel for the applicant / accused. He argued that the present applicant was arrested

on 30th July, 2015 and test identification parade came to be conducted after about six months on 27th January, 2016. Alleged eye witnesses Subham Chaugule and Ganesh Banpatte who are not naming the present applicant are stated to have identified the applicant in the test identification parade. According to the learned counsel for the applicant, except this evidence of identification, there is no material to connect the applicant to the crime in question.

3. As against this, the learned APP opposed the application by contending that there are three eye witnesses to the incident in question and clothes as well as motor cycle came to be seized at the instance of the present applicant.

4. Perused the charge-sheet. Subam Chaugule, Ganesh Banpatte and Shashank Manjule are stated to be the eye witnesses to the incident of murder of Rohit Dhotre. The incident of murderous assault on Rohit Dhotre occurred on 9th July, 2015 at Rewale Square, Kharalwadi, Pimpri. Rohit Dhotre succumbed to the injuries on 7th October, 2015. That is how section 302 of the Indian Penal Code came to be added to the case diary of trial resulting in filing of supplementary charge-

sheet.

5. Subham, Ganesh and Shashank in unison have stated that at about 8.00 p.m. on 9th July, 2015, Rohit Dhotre (since deceased) came to Rewale Square where they all were talking. As per version of these three witnesses, accused Ajit Yadav and Javed Sayyed came on motor cycle and assaulted Rohit Dhotre by means of koyatas. These eye witnesses further stated that subsequently co-accused Harish Dhotre and one more friend of Ajit Yadav came on the spot by another motor cycle and they also assaulted Rohit Dhotre by means of koyatas. The F.I.R. lodged by Santosh Dhotre - father of deceased is on the basis of information given by eye witness Subham Chaugule.

6. According to the prosecution case, the present applicant was subjected to identification by eye witnesses Subham Chaugule and Ganesh Banpatte on 27th January, 2016 and these witnesses have identified the present applicant. At the instance of the present applicants, clothes allegedly worn by him on the date of incident came to be seized. Similarly, motor cycle is also seized.

7. Recovery panchanama does not show that the clothes recovered at the instance of the present applicant were stained with blood. There is no evidence to connect recovery of motor cycle to the crime in question.

8. Test identification parade came to be conducted by the Executive Magistrate on 27th January, 2016. Applicant Suresh Jaiswal was arrested on 30th July, 2015. Naturally, therefore, the applicant must have been produced before the learned Magistrate for the purpose of remand from time to time. Identification by witnesses Subham and Ganesh is after six months.

9. Considering this nature of evidence against the present applicant, his pre-trial detention is not warranted and, therefore, the order:-

- (i) The application is allowed;
- (ii) The applicant / accused in Crime No.400/2016 for the offences punishable under section 143, 147, 148, 149, 307, 323, 504 read with 34 of the Indian Penal Code,

section 37(1) read with 135 of the Maharashtra Police Act as well as under section 4(25) of the Arms Act registered with Pimpri Police Station, Pune be released on bail on his executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) 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 / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;
- (iv) 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;
- (v) The applicant / accused shall attend each and every date of the hearing before the trial Court and shall co-operate

for expeditious disposal of the trial;

(vi) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;

(vii) The application is disposed of accordingly.

(A.M.BADAR, J.)