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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1377 OF 2016

Vishwadeep @ Handya Subhash Naik

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Viral Rathod for applicant.

Mr. Deepak Thakare APP for State.

CORAM: A.S. GADKARI, J.

DATE : 16th September 2016.

P.C.

1 This is an application under Section 439 of Cr. P.C. for bail in CR No.326 of 2015 registered with Bhandup Police Station, Mumbai dated 7.6.2015 under Sections 302, 452, 427, 506(2), 143, 144, 146, 148, 149, 120(B) of the Indian Penal Code and under Sections 4 and 27 of the Arms Act and under Section 37(1) read with 135 of the Maharashtra Police Act..

2 The date of the incident is 7.6.2015 at about 2.00 a.m. The first information report is lodged by Smt. Priya Anil Pande, wife of the deceased Anil Pande. It is stated in the first information report that, on

6.6.2015 at about 11.00 a.m., the deceased Anil along with his friend Vija Bawa had been for a stroll in the jungle. At that time, their pet dog namely Kivi was with Anil. That when the deceased along with his friend and his pet dog were having stroll near the ground, accused No.1 Saurabh Khopade and another accused persons of Matoshree Mitra Mandal were playing cricket there. At that time pet-dog Kivi caught hold the cricket ball in his mouth and due to same there were altercations between the deceased Anil on one side and the accused Saurabh Khopade and other accused persons on the other side. During the said altercations both the sides abused each other. In the night of 6.6.2015 at about 10.30 p.m., Anil had been to his house and was abusing Saurabh Khopade and other persons. At that time, the friend of Anil namely Vija Bawa and a lady from neighbour namely Smt. Anusuya Tumbade pacified the applicant. After dinner Anil went to sleep. At about 2.00 a.m. on 7.6.2015, Saurabh Khopade along with other accused persons mentioned in the first information report, came at the house of the deceased Anil and hurled stones on his house. They were also abusing Anil in filthy language. Saurabh Khopade and co-accused were armed with swords, knives. It is stated in the said report that there were 5 to 6 unknown persons having base-bat, iron rods and knives in their hands. Saurabh Khopade and other accused persons broke open the doors of the

house of applicant and barged inside and assaulted Anil with the sharp edged weapons. They also threatened the first informant and thereafter left the scene of offence. The deceased Anil was declared dead prior to admission to the hospital. After lodgment of the first information report, the Police registered aforesaid crime and investigated it. During the course of investigation, police recorded the statements of various witnesses and after receipt of necessary and relevant reports from other agencies including medical report, police have submitted chargesheet.

3 Heard the learned counsel for the applicant, the learned APP for the State and also perused the entire chargesheet annexed to the present application.

4 The learned counsel for the applicant submitted that the name of the applicant is not mentioned in the first information report. That the name of the applicant surfaced on record in the statement of Avinash Jadhav. He submitted that in the statement of Avinash Jadhav it is stated that on 6.6.2015 at about 21.30 (9.30 p.m.) Saurabh Khopade along with other accused persons including the applicant hatched a conspiracy to kill Anil Pande, which he heard near the Pimpaleshwar Mahadev Mandir. He submitted that there is no other evidence as against the applicant and therefore the applicant may be released on bail. The learned counsel for

the applicant submitted that till the date of filing of the present application as per his instructions, no record of test identification parade was available with the applicant.

5 The learned APP per contra vehemently opposed the application and submitted that though it is mentioned in the first information report that some unknown persons were also present at the scene of offence and were holding Base-ball bat, iron rod, and knife, during the course of investigation a Base-ball bat is recovered at the instance of applicant by effecting a panchanama under Section 27 of the Evidence Act. He further submitted that at the time of arrest of the applicant blood-stains were found on his pant which was on his person. He submitted that the involvement of the applicant is therefore established by the prosecution in the present case.

6 As far as the half-pant which was on the person of the applicant at the time of his arrest is concerned, the same was having blood-stains on it, however, it is to be noted here that the alleged date of incident is 7.6.2015 and the seizure of the said half pant is dated 11.6.2015. It is stated in the panchanama dated 11.6.2015 that the applicant was wearing the said pant which was having blood-stains on it. The said circumstance as propounded by the prosecution prima facie appears to be doubtful to

accept.

7 As far as recovery of base ball bat at the instance of applicant is concerned, though it is stated in the said discovery panchanama dated 12.6.2015 that the said base ball-bat was having blood-stains on it, prima facie it appears that there is no Chemical Analyzer's report available on record to conclude the fact that the blood-stains having blood group of deceased Anil were on the said bat. It is to be noted here that in the seizure panchanama dated 11.6.2015 of the part of the applicant, it is mentioned that the applicant was having wound on his right hand thumb at the time of said seizure. Prima facie, the prosecution has not established the link of blood-stains on the said base ball, so also the wound which was on the person of the applicant at the time of seizure of his clothes. Till date the record annexed to the present application is silent about any test identification parade held by the Investigating Officer to establish the identity of the applicant. Apart from this, there are no antecedents at the dis-credit of the applicant. In view of the above, the applicant has made out a case for his release on bail.

8 Hence, the following Order:

(i) The applicant be released on bail in CR No.326 of 2015 registered with Bhandup Police Station, Mumbai on his

furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from the jail, the applicant shall attend the Bhandup Police Station once in month i.e. on every 1st Monday of the said month between 11.00 a.m. to 2.00 p.m.

(iii) The applicant shall also attend all dates before the Trial Court.

(iv) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail.

(v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

9 Bail Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)