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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1197 OF 2016

Nagesh Annasaheb Bhosale	..Applicant.
V/s.	
State of Maharashtra	..Respondent.
Mr.Shriram S. Chaudhari for the applicant.	
Mr.Y.M.Nakhwa, APP for respondent-State.	

CORAM : A.M.BADAR, J.

DATED : 19TH JULY, 2016

P.C. :-

1. The applicant / accused in Crime No.13/2016 for offences punishable under 143, 147, 148, 149, 302, 120B and 201 of the Indian Penal Code, sections 3/25 and 27 of the Arms Act and section 135 of the Maharashtra Police Act registered with the Pandharpur City Police Station, District Solapur by this application is seeking anticipatory bail.

2. Heard the learned counsel for the applicant / accused. He submitted that the first anticipatory bail application of the applicant filed at the initial stage after

registration of the offence came to be withdrawn and now this application is moved after filing of the charge-sheet against all co-accused. The learned counsel for the applicant argued that the F.I.R. as well as statement of witnesses are not naming the applicant as the assailant. He argued that there is no iota of evidence to show that the applicant indulged in conspiracy to eliminate his own son-in-law.

3. The learned APP opposed the application by submitting that Abhay Takane is an eye witness to the incident in question. The learned APP further pointed out that statements of Mahadev Takane and Surekha Takane. According to the learned APP, the instance of the co-accused Prithviraj Bhosale there is recovery and memorandum of statement of Prithviraj shows the complicity of the applicant in the crime in question. It is not disputed that the earlier application was filed at the initial stage prior to filing of the charge-sheet against co-accused.

4. Perused the charge-sheet. The F.I.R. came to be lodged by Saudamini Somnath Takane. She is the daughter of the present applicant. Deceased Somnath Tanake was her

husband. The recitals in F.I.R. shows that Saudamini eloped from her parental house and married Somnath on 8th May, 2015. Thereafter, she started residing with her husband Somnath and his family.

5. The informant Saudamini averred in her F.I.R. that on 6th January, 2016 at about 8.20 p.m. she and her husband Somnath were returning along with their son Harshvardhan on motor cycle. Near Bhadule Square, in front of Bhagwant Krishi Kendra, 12 persons accosted them. She had named those 12 accused persons and further stated that 3 or 4 unknown persons were also accompanying those 12 accused persons. The informant named known accused persons in the F.I.R. The informant further averred that they all assaulted her husband and committed his murder. According to the informant, the known assailants were her cousin brothers. The informant who is an eye witness to the incident has not named the present applicant as the assailant. The F.I.R. only contains averment that the informant heard that her father and her relatives will commit murder of her husband. Source of this vague information is not disclosed by the informant.

6. According to the prosecution case, Abhay Tanake is an eye witness to the incident in question. His statement recorded during the course of investigation shows that he saw 11 known accused persons accompanied by 3 to 4 unknown persons were assaulting his brother Somnath in presence of Saudamini. Statement of Abhay Takane does not disclose that the present applicant was on the scene of offence at the time of the incident. Statement of Abhay also contains averments to the effect that he heard from some source that the applicant and nephews of the present applicant will commit the murder of Somnath. Witness Abhay is not disclosing the source of this information as well as further details as to the date of knowing this information.

7. During the course of investigation, the prosecution has recorded memorandum of statement of accused Prithviraj Bhosale under section 27 of the Evidence Act. This confessional statement is stated to have resulted in recovery of some weapon and clothes. Inadmissible portion of this memorandum statement cannot be looked into as the same is hit by sections 25 and 26 of the Evidence Act being confession to a police officer. This is all the evidence against the present

applicant so far as the crime in question is concerned.

8. Perusal of order of the learned Additional Sessions Judge while releasing some of co-accused on bail goes to show that informant Saudamini on two occasions had sworn an affidavit to the effect that after the incident, she was in a mental shock and her signature was obtained on the F.I.R. without allowing her to read the contents thereof. This appears to be one of the factor considered by the learned Additional Sessions Judge while granting bail to co-accused. According to the learned counsel for the applicant, even witness Abhay Takane had also sworn and submitted an affidavit before the learned Additional Sessions Judge when the application of the present applicant was under consideration. Witness Abhay has stated that the informant Saudamini had not named the present applicant in her F.I.R. The copy of the same is placed on record. At this pre-trial stage, no comments are required to be made on this aspect.

9. Ignoring such affidavits, if the entire papers of investigation are perused, then it seems that the present applicant is implicated in the crime in question on the basis of

surmises and conjectures of informant Saudamini and witness Abhay Takane. Now, the investigation of the crime in question is entirely over. Co-accused are already released on bail. The applicant / accused was not present on the scene of offence to participate in the assault. As such, no recovery is to be effected from the present applicant. Perusal of the charge-sheet does not show any evidence regarding conspiracy or abetment by the present applicant to other accused persons in commission of the crime in question.

10. Considering the nature of evidence against the present applicant after conclusion of investigation, his liberty cannot be curtailed on the basis of omnibus statements of the informant and witness Abhay Takane. Hence the order:-

- (i) The application is allowed;
- (ii) In the event of arrest, the applicant / accused in Crime No.13/2016 for offences punishable under 143, 147, 148, 149, 302, 120B and 201 of the Indian Penal Code, sections 3/25 and 27 of the Arms Act and section 135 of the Maharashtra Police Act registered with the Pandharpur City Police Station, District Solapur be released on bail on his executing P.R. bond in the sum of

Rs.50,000/- with one or more sureties in the like amount;

- (iii) As a condition of this order, the applicant / accused shall attend Pandharpur Police Station, Solapur on 30th July, 2016, 31st July, 2016 and 7th August, 2016 between 11.00 a.m. to 1.00 p.m. and he shall co-operate with the Investigating Officer;
- (iv) 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;
- (v) The applicant / accused 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.)