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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1719 OF 2015

Sachin Ramesh Patil

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. M.S. Mohite i/b Akshay M. Gosavi for applicant.

Ms. P.P. Shinde, APP for the State.

CORAM: A.S. GADKARI, J.

DATE : 13th January 2016.

P.C.

1 The applicant is seeking bail in CR No.I-151 of 2014 registered with Vasai Police Station, District-Thane for offence punishable under Sections 302, 307, 120-B read with Section 34 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act.

2 Heard the learned Counsel for the applicant and the learned APP. I have perused the chargesheet annexed to the application and other documents produced before me.

3 The incident of assault on the victim Shailesh Thakur and his friend Prakash Handore took place on 1.12.2013 at about 7.30 p.m. to 7.45

p.m. As per prosecution case, five persons alighted from Maruti VagonR Car near the office of the deceased Shailesh Thakur and attacked him with swords and firearms. When one of the accused person had given a blow with sword on the deceased Shailesh, his friend namely Prakash Handore intervened and tried to ward off the said blow. At that time the said witness received grievous hurt. After completion of the investigation, the Police have filed the chargesheet.

4 Mr. Mohite, the learned Counsel for the applicant submitted that the main conspirators behind the crime namely Rajesh Raut and Nitin J. Thakur have been released on bail by this Court. He further submitted that in the entire chargesheet no specific role has been attributed to the applicant in the present crime. He submitted that there are in all 13 accused persons out of which 9 accused persons have been released on bail till date including principal conspirator as stated herein above. He lastly submitted that the evidence against the applicant is of very weak in nature. He therefore submitted that the further judicial custody of the applicant is unwarranted.

The learned APP on the other hand pointed out that one of the eye-witnesses namely Vaikunth Pandey has stated in his statement dated 2.12.2013 that he saw three persons with mask on their face, immediately

after assault, fleeing away from the scene of offence from a car in the street lights and the head lights of the vehicles. She further submitted that the said eye-witnesses Vaikunth Pandey identified the applicant in test identification parade conducted at the instance of the Police on 20.2.2014. She further submitted that at the instance of the applicant the place where the conspiracy hatched to kill Shailesh was discovered. She further submitted that the applicant showed the place where the conspiracy to kill Shailesh has hatched by the conspirator. That the applicant has also shown the place where he burnt his clothes after commission of offence. She therefore submitted that the present application may be rejected.

5 In response, Mr. Mohite, the learned Counsel for the applicant submitted that there is material infraction of the provisions of Criminal Manual while conducting the test identification parade. He submitted that the test identification parade is conducted in breach of mandatory guidelines prescribed under the Manual. He submitted that the applicant has shown the place where the conspiracy to kill Shailesh has hatched, however the principal conspirator has been released on bail. As far as the place where the burnt clothes alleged to have been burnt after commission of offence, he submitted that nothing was found from the said place to the police. Apart from these circumstances, there is no other evidence available

against the accused person on record. As far as eye-witness namely Vaikunth is concerned, he submitted that he has given vague description of the person seen by him.

6 It appears from record that the alleged discovery of the place at the instance of the applicant, where the conspiracy was hatched, was already within the knowledge of the Police. Apart from the said fact of pointing out the place itself may not fall within the purview of Section 27 of Evidence Act. The last circumstance i.e. showing of place where the applicant burnt his clothes after commission offence, nothing has been discovered from the said place and therefore the said circumstance is of no avail to the prosecution. As far as alleged eye-witness is concerned, the said eye-witness has not stated whether the applicant was holding sword or chopper in his hand and his statement qua the applicant appears to be vague.

7 After taking into consideration the aforesaid facts, I am of the opinion that the applicant has made out the case of his release on bail. Hence, the following Order:-

(i) The applicant shall be released on bail on his executing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one surety in the like amount or two sureties for total amount of Rs.30,000/-.

(ii) After availing bail, the applicant shall attend the concerned Police Station on every Sunday between 10.00 a.m. to 12.00 noon, till the conclusion of the trial.

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

8 The application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)