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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.1734 OF 2015

Suraj Ramlakhan Pande @ Ram Pande	...Applicant
V/s.	
The State of Maharashtra	...Respondent

Mr.Priyal Gopaldas Sarda, for the Applicant.

Ms.A.A.Mane, APP for the Respondent – State.

P.I – N.K.Bankar, Manpada Police Station, Thane City.

CORAM : REVATI MOHITE DERE, J.

***DATED : 22nd JANUARY, 2016.
(IN CHAMBERS)***

P.C. :

1. Heard learned counsel for the Applicant and the learned APP for the Respondent - State.
2. This is the second bail application preferred by the applicant. The first bail application preferred by the applicant was dismissed as withdrawn vide order dated 3rd March, 2015.

3. The applicant states that the applicant has been arrested in connection with C.R.No.I-404 of 2014 registered with the Manpada Police Station, Thane for the alleged offences punishable under Sections 397, 307 r/w 34 of the Indian Penal Code and under Sections 3, 25(1)(A), 27 of the Arms Act and under Section 37(1) r/w 135 of the Bombay Police Act.

4. The incident in question has taken place on 14th August, 2014 at about 9.35 a.m. According to the complainant i.e. First Informant – Rangnath Bala Sonawane, on the said day and time, he was walking with a bag containing Rs.7 lacs. He has alleged that the original accused nos.1 and 5 accosted him; that accused no.1 put a pistol on his chest and snatched the bag containing money ; and that when he raised hue and cries, accused no.5 assaulted him with a chopper on his hand and head. According to the First Informant, when he started chasing accused no.1, accused no.1 fired a pistol in his direction, which missed him. Thereafter, the accused no.1 was apprehended on the spot with a pistol. It appears that a complaint was lodged with the Manpada Police Station, by the complainant, as against two unknown persons, alleging offences punishable under Sections 397, 307 r/w 34 of the Indian Penal Code. According to the prosecution, the

applicant along with others was sitting on a motorcycle near the spot and watching the said incident and that he was party to the incident. It is alleged by the prosecution, that when the applicant and the others saw accused nos.1 and 5 running, they too pelted from the said spot.

5. Learned Counsel for the applicant submitted that during the course of investigation, five more persons including the applicant came to be arrested. He submitted that out of seven accused, three persons have been enlarged on bail and that the role of the applicant is similar and at par with accused nos.2 and 4, who have been enlarged on bail. He submitted that no overt act has been attributed to the applicant in the commission of the offence and that the only allegation as against the applicant is, that he was sitting on the motorcycle, near the spot, where the alleged incident took place. He submitted that there is no recovery of any weapon at the instance of the applicant. He submitted that even otherwise, no offence as alleged is disclosed inasmuch as, nothing was stolen from the complainant. He further states that although in the Test Identification Parade, four witnesses have identified the applicant, the said witnesses have stated that the applicant was sitting on the bike near the spot and ran away soon after

the incident. He further submitted that there is no material on record to show that the applicant had any knowledge or that he had participated in the commission of the offence. He further states that the applicant has no antecedents.

6. Learned APP opposed the bail application. She submitted that the applicant had received a tip from the tipper and that it was the applicant who had assembled all the accused together. She submitted that the applicant has been identified in the Test Identification Parade, by the complainant and three eye witnesses. She further submitted that a motorcycle is recovered at the instance of the present applicant. On being questioned, she submits that there are no antecedents as against the applicant. She further states on instructions that the order by which accused nos.2 and 4 have been enlarged on bail, has not been challenged by the prosecution.

7. Perused the papers. Admittedly, the applicant is not amongst the accused who fired at the complainant or who assaulted the complainant. Although, Section 34 has been alleged as against the accused that is a

matter which will be decided by the Trial Court. Even though the applicant has been identified in the Test Identification Parade, it appears that the witnesses who identified the applicant have stated that the applicant was sitting on a bike, near the spot of the incident and that he ran away from the spot, when he saw accused nos.1 and 5 running. The role of the applicant is similar to the role played by original accused nos.2 and 4, who have also been identified as persons sitting on the bike, at the spot of the incident and who ran from the spot soon after the incident. It appears that as of today, there are no CDR records to show that it was the applicant who had received a tip from the tipper and had assembled all the accused together. There are no antecedents as against the applicant.

8. Learned Counsel for the applicant states on telephonic instructions that the applicant is ready to abide by any of the conditions that may be imposed by this Court, including the condition of attendance and that the applicant will not file any application seeking modification/relaxation of the aforesaid conditions. The said statement is accepted.

9. Considering the aforesaid, the applicant deserves to be enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.25,000/- with one or two local sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the 1st and 3rd Saturday of every month between 10.00 a.m. to 11.00 a.m. till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any persons concerned with the case;

(iv) The applicant shall attend the Sessions Court on every date of the hearing and shall cooperate with the conduct of the trial;

(v) An undertaking to the aforesaid clauses (ii) to (iv) shall be filed by the Applicant, in the Trial Court, within two weeks of his release ;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear, that the observations made herein are prima facie and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

12. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE,J.)