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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2356 OF 2015

Manoj Lamane	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Milan Desai i/b. Ashwini M.Desai for the applicant.

Mr.Deepak Thakre, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 12TH AUGUST, 2016

P.C. :-

1. The applicant / accused in Crime No.I-179/2013 for the offences punishable under section 307 and 109 read with 34 of the Indian Penal Code and under section 3/25 and 27 of the Arms Act registered with Kharghar Police Station, District Raigad at the instance of the Superintendent of Central Prison, Taloja by this application is praying for releasing him on bail.

2. Heard the learned counsel for the applicant / accused. He argued that except the confessional statement of co-accused Devendra Jagtap, there is no plausible evidence

against the present applicant. The learned counsel submitted that the confessional statement of co-accused Devendra Jagtap has not resulted in recovery of the pistol as envisaged by section 27 of the Evidence Act and as such, the same is not admissible. He further argued that though it is alleged that the present applicant has supplied sim-card and cell-phone to co-accused Devendra Jagtap, nothing was recovered by the prosecution to substantiate this averment. The learned counsel further argued that electronic record in support the statement of Ahmed Ali is also not collected by the prosecution.

3. The learned APP opposed the application by contending that the crime in question is serious and evidence collected by the prosecution prima facie shows the complicity of the present applicant in the crime in question.

4. Perused the charge-sheet. According to the prosecution case in the incident of firing in the Central Prison, Taloja which happened on 27th June, 2013, prisoner Abu Salem Kareem Ansari was injured by co-accused Devendra Jagtap. It is the case of the prosecution that while Devendra jagtap was

lodged in the Central Prison, Taloja, co-accused Shakeel @ Chhota Shakeel had given the contract of killing Abu Salem to co-accused Devendra Jagtap. The present applicant is alleged to have supplied one cell-phone and sim-card to co-accused Devendra Jagtap and thereafter, pistol and cartridges for effecting the killing.

5. The confessional statement of co-accused Devendra Jagtap came to be recorded on 4th July, 2013 wherein the story of the prosecution is reflected from the mouth of co-accused Devendra. Panchanama recorded consequently shows the practical as to how a pistol can be thrown inside the Central Prison. For that purpose, the practical is said to have been done by throwing a brick inside the Prison. Place where the fire-arms were allegedly concealed by the co-accused is also said to have been shown by him. Admissibility of this discovery will have to be examined at the trial.

6. Statement of Advocate Mr.Sachin Tigde shows that on two occasions when he had met co-accused Devendra Jagtap in the Central Prison, the present applicant had

accompanied him. However, contemporaneous record of the Central Prison does not disclose the name of the present applicant as visitor to the jail.

7. Though witness Ahmed Ali is stating that there was exchange of text messages between him and Chhota Shakil, the electronic record corroborating his version or cell-phone of this witness is not seized.

8. It is not disputed that this is the only evidence against the present applicant to connect him with the crime in question.

9. Considering this nature of evidence against the present applicant for the offence alleged against him, his further pre-trial detention is not warranted. Hence the order:-

- (i) The application is allowed'
- (ii) The applicant / accused in Crime No.I-179/2013 for the offences punishable under section 307, 109 read with 34 of the Indian Penal Code and under section 3/25 and 27

of the Arms Act registered with Kharghar Police Station, District Raigad be released on bail on his executing P.R. bond in the sum of Rs.50,000/- with one or more solvent 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 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.)