

...Applicant

Versus

...Respondent

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Ms Ashvini A. Takalkar, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th FEBRUARY, 2017.

P.C. :-

This is a second application for bail filed by the aforesaid Applicant, who is facing prosecution in Sessions Case No.211 of 2014 arising out of Crime No.297 of 2013 registered at Haveli Police Station, Pune, for offences punishable under Sections 143, 147, 148 and 302 read with 149 of the Indian Penal Code.

2. The case of the prosecution in brief is that on 8th December, 2013 the Applicant and others had formed unlawful assembly armed with deadly weapon and committed murder of Goraksh @ Pappu Gopinath Taware. The said crime was registered pursuant to the FIR lodged by Sarika Goraksh Taware, widow of the deceased Goraksh @ Pappu Taware.

3. Mr. Khamkar the learned counsel appearing for the Applicant has submitted that some of the accused in the crime have been granted bail by the Sessions Court. He contends that the Applicant herein is entitled for bail on the ground of parity. He has further submitted that there is delay in recording statements of the eye witnesses and no reliance can be placed on their statements particularly when they have enmity with the Applicant and the other accused. The learned counsel for the Applicant has further submitted that no weapon was recovered from the Applicant. He has submitted that the trial has not yet commenced and that the Applicant is in custody since last three years. He therefore, claims that considering all the aforesaid facts, the Applicant is entitled for bail.

4. Ms Takalkar, the learned APP has contested the Application on the ground that the offence is of serious nature. The eye witnesses viz. Anil Taware, Dhanaji Dhebe and Sanjay Barge have named the Applicant. She submits that their statements prima facie indicate that the Applicant was not only the member of the unlawful assembly but was armed with fire arm and was involved in committing murder of Goraksh @ Pappu Taware. She has further submitted that previous bail application was withdrawn after it was argued and when the Court

was not inclined to grant bail. She has further submitted that there is no change in circumstances since the withdrawal of the previous application. She has submitted that the bail application filed by one of the co-accused has been rejected by another Bench of this High Court. She has submitted that order of Sessions Court cannot be a ground for release of the Applicant on parity.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State. The records prima facie reveal that Sarika Goraksh Taware, widow of deceased Goraksh @ Pappu Taware has lodged FIR on 9th December, 2013 alleging that her husband was shot dead while he was in the house of Dhanaji Dhebe. She had not witnessed the incident. Nonetheless, after receiving information she had gone to the place of the incident and had seen the Applicant and other assailant at the place of the incident. Pursuant to the FIR lodged by her, Crime No.297 of 2013 was registered against the Applicant and the other accused.

6. The body of the deceased was sent for post mortem. The post mortem report prima facie reveals that there were about 22 injuries over the body of the deceased Goraksha alias Pappu Taware.

The details of the injuries are given in column No.17 of the post mortem report. The Doctor has opined that the death of said Goraksh @ Pappu Taware was due to multiple firearm injuries.

7. The incident had occurred in the house of Dhananjay Dhebe. The statement of Dhananjay Dhebe prima facie reveals that on 8th December, 2013 at 10.30 p.m. Goraksh @ Pappu Taware, Pappu Jadhav and others had came to his house. They appeared to be scared. He has stated that the Applicant herein and others who have been named in his statement entered his house armed with firearms. He has stated that the said persons fired at Goraksha @ Pappu Taware and committed his murder and thereafter left the place of the incident.

8. The statement of Pappu Jadhav also prima facie reveals that on 8th December, 2013 he alongwith Pappu Taware and some others had gone to the house of Dhanaji Dhebe. He has stated that about 5 to 10 minutes thereafter the assailants including the Applicant herein entered the house armed with firearms and fired at Pappu Taware and caused his death.

9. The Statement of Anil Taware and Sanjay Barge also prima facie reveals that the Applicant was one of the members of the

unlawful assembly, who had entered the house of Dhananjay Dhebe with firearm and committed murder of Goraksha @ Pappu Taware.

10. The aforesaid statements of the eye witnesses prima facie reveal that the Applicant herein was involved in committing murder of Goraksh @ Pappu Taware. Needless to state that at this stage, it is not permissible to appreciate or analyse the material on record. Hence, the contention of the learned counsel for the Applicant that there are material omissions or inconsistency in the statements cannot be considered. Similarly, at this stage, the delay in recording the statements of the witnesses would not be a ground for disbelieving the witnesses, as delay can always be explained. The fact that some of the accused have been released on bail by the Sessions Court is also not a ground to claim bail before this Court on the ground of parity.

11. The Applicant has also relied upon the order dated 23rd March, 2015 passed in Bail Application No.162 of 2015 whereby this Court has released one of the co-accused Nikhil Potghan on bail. A perusal of the said order reveals that the said accused was granted bail as no overt acts were attributed to him. In the present case, as stated earlier, the material on record prima facie indicates that the Applicant was armed with a firearm and was deeply involved in committing

murder of the deceased. Hence, the said order is of no assistance to the Applicant.

12. It is true that the accused has a right of speedy trial. Nonetheless, a judicial note has to be taken of the fact that the trial courts are over burdened and very often heavy pendency of cases makes it impossible to decide the cases expeditiously. In such facts and circumstances a fine balance has to be maintained keeping in mind the rights of the accused as well as the rights of the victim and societal interest at large. In the instant case, the Applicant is involved in committing gruesome murder of Goraksha alias Pappu Taware. The learned APP has also submitted that the Applicant is facing trial in another case arising from C.R.353 of 2013 under sections 363, 364 and 385 of the IPC. Considering the gravity of the offence, the antecedents of the Applicant and the possibility of interfering with the eye witnesses, in my considered view, delay per say would not be a ground for releasing the Applicant on bail. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)