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

CRIMINAL BAIL APPLICATION NO.748 OF 2017

Santosh Balu Gondhale

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.A.P.Mundargi, Senior Counsel a/w Mr.Subir Sarkar, i/b
Mr.S.H.Nimbalkar, for the Applicant.

Mr.V.V.Gangurde, A.P.P for the Respondent-State.

PSI – J.B.Ahirrao, Kalyan Taluka Police Station, Thane.

CORAM : REVATI MOHITE DERE, J.

DATE : 29th SEPTEMBER, 2017

1. This is the third bail application preferred by the applicant. It is a matter of record and not disputed by the learned APP, that both the earlier bail applications were not heard on merits and were withdrawn, without advancing any arguments.

2. Heard learned counsel for the parties.

3. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-123 of 2015 registered with the Kalyan Taluka Police Station, Thane, for the alleged offences punishable under Sections 307, 143, 147, 148, 149, 504, 507, 427,120-B of the Indian Penal Code, under Sections of 3(1), 25 and 27 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act.

4. Learned Senior Counsel for the applicant submits that the applicant has been falsely implicated in the aforesaid case. He submitted that the entire incident has been staged by the complainant and others. He submitted that admittedly the applicant was not present at the spot, when the alleged incident took place, in the intervening night of 20th May 2015 and 21st May, 2015. He submitted that admittedly, neither the complainant nor any of the witnesses who were alleged to be present at the spot were injured in the said incident. He submitted that the witness on conspiracy i.e Ramesh Tukaram Shelar has been planted by the complainant. Learned Senior Counsel further submitted that according to Ramesh Shelar, the

applicant was present alongwith others in Anup's office at Benelli, on 18th May, 2015, when and where the conspiracy to kill the complainant was hatched. Learned Counsel for the applicant submitted that it is a matter of record, that on 12th May, 2015, Anup's office was demolished by the Kalyan-Dombivali Municipal Corporation, and hence the question of meeting in Anup's office on 18th May, 2015, did not arise. In support of the same, learned Senior Counsel for the applicant relied on the statement of one Navnath Kavade, Police Constable and the FIR dated 13th May, 2015, lodged by Santosh Shingole. He further submitted that there is no recovery of any weapon at the instance of the applicant.

5. Learned APP opposed the application. He, however, does not dispute the fact, that Anup's office was demolished by the Kalyan-Dombivali Municipal Corporation on 12th May, 2015. He also does not dispute the fact, that the applicant was not present at the spot at the time of the alleged incident of assault on the complainant. He, however, states that the applicant has antecedents.

6. Perused the papers. According to the complainant-Sunil G. Dhumal, he used to supply building material to Poddar Developers. He has alleged that the applicant was also in the business of supplying building material and was upset, as the complainant was supplying building material to Poddar Developers. He has alleged that on 11th February, 2015, the applicant came alongwith the other accused, and abused and threatened him. He has alleged that on 20th May, 2015, when he was going alongwith some of his friends in the Duster Car, the aforesaid incident took place. He has stated that some of his friends were following him in the Innova Car, when the incident took place on the Murbad Road. He has stated when both the cars were going, some 3 to 4 persons were following them on 3 motorcycles. He has identified some of the said persons. According to the complainant, in the intervening night of 20th May, 2015 and 21st May, 2015 i.e at 12.55 a.m, Anup Gondhali, who was on a motorcycle overtook the complainant's car. He has stated that Ganesh Mhaskar was sitting behind on the motorcycle and that Ganesh had a pistol in his hand. He has stated that Ganesh came in his direction with a pistol and fired in his direction, however, the said bullet missed him and hit the car. He has further set out the manner in which the other co-accused also fired in the direction of the 2

vehicles i.e. Duster and Innova Car. Admittedly, the applicant was not present at the time of the said incident and none received any injuries in the said incident. The allegation as against the applicant is, that he had conspired to kill the complainant. In support thereof, the prosecution has recorded the statement of one Ramesh Tukaram Shelar, who has specifically stated that he had visited the office of Anup Gondhali on 18th May, 2015, at Benelli; that at around 2.00 p.m., the applicant came to Anup's office and a conspiracy was hatched to kill the complainant. *Prima facie*, the statement of the said witness that he was present at the time when conspiracy was hatched appears doubtful, inasmuch as, admittedly, the office of Anup Gondhali was demolished by the Municipal Authorities on 12th May, 2015. The same is evident from the statement of Navnath Kavade, Police Constable, whose statement is on page 95 of the application. It also appears from the FIR lodged by Santosh Shingole, being C.R.No.I-114 of 2015, registered with the Kalyan Taluka Police Station, that Anup's office was demolished on 12th May, 2015, pursuant to the complaint made by him to the Corporation. According to Santosh Shingole, pursuant to the office being demolished, Anup and others, burnt his vehicle on the intervening night of 12th May, 2015 and 13th May, 2015. Considering the same, the

allegation that conspiracy was allegedly hatched on 18th May, 2015, in Anup's office appears to be *prima facie*, doubtful. There is no recovery at the instance of the applicant. *Prima facie*, considering the material on record, it is difficult to come to a conclusion that the applicant is guilty of the offences, with which he is charged. No doubt, the applicant has antecedents, however, it is also a matter of record, that the complainant himself has several antecedents.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;

iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall co-operate in the conduct of the trial;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within one week of his release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. 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.

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

(REVATI MOHITE DERE, J.)