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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.754 OF 2017

Atendra @ Ashish Virendra Yadav ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Mr.Sanjeev Sawant with Mr.B.K.Barve, Mr.Sanjay Sarin,
Mr.Gagandeep Kaur, Mr.Sandeep Barve and Mr.Himanshu Kode i/b.
B.K.Barve & Co. for the Applicant.

Ms.Veera Shinde, APP for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.

DATED : SEPTEMBER 14, 2017

P.C.:-

Heard the learned counsel for the parties.

2. By this application the Applicant seeks his enlargement on bail in connection with C.R.No.138/2016 registered with the Kasarwadavli Police Station, Thane for the alleged offences punishable under Section 302, 397, 450 read with 34 of the Indian Penal Code.

3. Learned Counsel for the Applicant submits that the prosecution case rests entirely on circumstantial evidence and that there

are no circumstances to connect the Applicant with the alleged offences. He further submitted that it is co-accused-Prashant Pawar, who had booked the Meru car and there is nothing to show that the Applicant was travelling in the said vehicle. Learned counsel tendered a compilation of judgments of the Apex Court, namely, ¹*Dipak Subhashchandra Mehta V/s. C.B.I. & Anr.* ²*Maulana Mohd. Amir Rashadi V/s. State of U.P. & Anr.* ³*Babu Singh Kushwaha V/s. CBI & Anr.* ⁴*Sanghian Pandian Rajkumar V/s. Central Bureau of Investigation & Anr.*, ⁵*Hussain & Anr. V/s. Union of India* and the judgment of this Court in ⁶*Dahyaji Gobarji Vanzara V/s. The State of Maharashtra* to show that the bail should be granted on the ground that the trial is likely to be delayed.

4. Learned APP opposed the application. She submitted that there is sufficient material to show the complicity of the Applicant in the alleged offence. She submitted that the trial has commenced and as such no interference is warranted.

5. Perused the papers. The prosecution case rests on circumstantial evidence. The Applicant and co-accused Prashant are

1 2012 All SCR 716

2 2012 All SCR 723

3 2016 ALL SCR (Cri) 510

4 2014 All Mr (Cri) 1871 (SC)

5 Cri. Appeal No.509 of 2017 & Anr.

6 2015 All Mr (Cri) 170

alleged to have murdered two persons i.e. Sitaram and his caretaker. The incident has taken place on 31 May, 2016. Co-accused Prashant Pawar was the former caretaker of Sitaram Vallabh Shroff (deceased). It appears from the statement of one Brijesh Patel that a Meru car was booked on 31 May, 2016 by co-accused Prashant Pawar. The said vehicle was called to Regency Heights, Ghodbundar Road, Thane. Brijesh Patel in his statement recorded on 3 June 2016, has stated that when he went to Regency Heights, two persons sat in his Meru car and asked him to take them to Dahisar Estate. Regency Heights is the place where the alleged murder took place. The said witness has identified the Applicant as well as the co-accused, as the persons whom he picked up from Regency Heights on 31 May, 2017 at about 5.33 p.m. The statement of Mohammed Akhlaq Mohammed Shabbir Khan, the watchman at the Regency Heights also shows that on 31 May, 2016 at about 3.00 p.m., two persons were trying to enter the lift without registering their names. He has stated that when he asked them to enter their names in the Register, co-accused-Prashant Pawar mentioned his name as Tendulkar and disclosed that they were relatives of Sitaram (deceased). He has further stated that he accompanied the said persons i.e. the Applicant and co-accused upto the 15th floor, till they rang the bell and the door was

opened. He has identified the said two persons, as the Applicant and co-accused Prashant in the test identification parade. The murder took place between 3.00 p.m. to 5.30 p.m. There is also a CCTV footage of the Building, which clearly shows the Applicant and co-accused entering the Regency Heights Building and thereafter, leaving the building in a Meru car. The post mortem notes shows that Sitaram and his caretaker Prashant were brutally assaulted.

6. Considering the aforesaid material, this is not a fit case to enlarge the Applicant on bail. Accordingly, the application is rejected.

7. The judgments relied upon by the Applicant have no application to the facts of the present case inasmuch as, the trial has already commenced and the panch witness has been examined. Since the trial has commenced, it is expected that the trial judge will complete the same at the earliest.

8. 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.

(REVATI MOHITE DERE, J.)