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

CRIMINAL BAIL APPLICATION NO.2480 OF 2016

Amol Kaluram Modak	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.P.M.Patil, for the Applicant.

Ms.S.S.Kaushik, APP for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd MAY, 2017

P.C. :

1. Heard learned counsel for the Applicant and the learned APP for the Respondent - State.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.338 of 2015 registered with the Loni Kalbhor Police Station, Pune for the alleged offences punishable under Sections 302, 120B r/w 34 of the Indian Penal Code, under Section 3 r/w

25 of the Arms Act and under Section 3(1)(i)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act.

3. Learned Counsel for the applicant submits that there is absolutely no material to connect the applicant with the alleged offences. He submitted that the applicant has no antecedents and that there is no material to connect the applicant with the organised crime syndicate. He further submitted that the applicant has not been named in the FIR dated 9th September, 2015, and that his name has cropped up for the first time in the complainant's supplementary statement, recorded on the next day. He submitted that the statement of the witness on the point of conspiracy does not show that the applicant was present in the meeting. He further submitted that there is no material on record, to show that the applicant had received any money. According to the learned counsel the only allegation as against the applicant is, that he had kept a watch on the movements of the deceased, for a month prior to the incident. He submitted that the said fact, is also not borne out from the statement of any witness.

4. Learned APP opposed the application. She does not dispute the

fact, that there are no statement of any witnesses to show that the applicant was keeping a watch on the movements of the deceased, for a month prior to the incident. She also does not dispute the fact, that the applicant has no antecedents.

5. Perused the papers. According to the prosecution, the incident took place on 9th September, 2015, at about 6.00 p.m. The complainant is Ramdas Modak, who has alleged that there was a quarrel between Uttam Gaikwad and Hemant Gaikwad (deceased) over some trivial issues, pursuant to which complaints were lodged by Hemant Gaikwad (deceased). The complainant is an eye-witness to the incident. According to the complainant, on 9th September, 2015 he alongwith Amol Gaikwad and Hemant Gaikwad (deceased) were chit chatting in Bala Zende's hotel. He has stated that thereafter, he and Hemant Gaikwad (deceased) went near his brother's i.e. Vishal Modak's house in Hemant Gaikwad (deceased)'s car. According to the complainant, as Hemant Gaikwad (deceased) informed him that he would go to visit his relative Soma, the complainant went towards his brother's house. He has stated that he heard firing, pursuant to which he turned around and rushed towards the car and saw Mangesh

Modak and 3 others sitting on a motorcycle. He has stated that he saw that Mangesh and one unknown person had a revolver and that Hemant Gaikwad (deceased) was struggling to rescue himself. He has stated that again Hemant Gaikwad (deceased) was shot at, pursuant to which, he collapsed. He has further alleged that Hemant Gaikwad (deceased) shouted for help. According to the complainant, the assailants stated that they had completed the work and that they should inform Anil Kaka. Pursuant thereto, the complainant lodged a complaint which was registered vide C.R.No.338 of 2015 as against Anil Gaikwad, Uttam Gaikwad, Sagar Gaikwad, Dashrath Gaikwad, Sagar Modak, Shekhar Modak, Mangesh Modak and 3 unknown persons and others. After investigation, charge-sheet was filed for the offences punishable under the Indian Penal Code and subsequently after MCOC Act was applied, supplementary charge-sheet was filed on 5th March, 2016. The applicant was arrested on 10th September, 2016 and has been in custody since then. Admittedly, the applicant has no antecedents. There is no material brought on record to show how the applicant is connected with the organised crime syndicate. There is prima-facie no material in support of the allegation that the applicant was keeping a watch on the movements of Hemant Gaikwad

(deceased), for a month prior to the incident. Admittedly, the applicant was not present at the spot when Hemant Gaikwad (deceased) was murdered, even according to the prosecution. The statement of witness – Santosh Modak does not show the presence of applicant, in the hotel, where the conspiracy was hatched to murder Hemant Gaikwad.

6. Considering the material on record, qua the applicant, 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.1,00,000/- with one or two local solvent sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Monday 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 place of residence and mobile contact number immediately after being released i.e. within two weeks of his release 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 enter the jurisdiction of Loni Kalbhor Police Station, except for the purpose of attending the police station, as mentioned in clause (ii);

v) The Applicant shall not tamper with the evidence or attempt to influence the complainant, witnesses or any person concerned with the case;

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

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the trial Court, within two week's of his release;

viii) 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.

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

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.

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

(REVATI MOHITE DERE, J.)