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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 187 OF 2018

Kiran Dinesh Nagare	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Niteen Pradhan a/w Ms. S. D. Khot, Aditya Casaria i/b Yogesh Jaybhaye, for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

Mr. Vijaykumar Chavan, ALP, Division – 1, Nashik.

Mr. K. D. Wagh, API, Panchavati Police Station, Nashik.

CORAM : P. N. DESHMUKH, J.

DATE : APRIL 16, 2018

PC :-

1. This application is filed by one of the accused involved in C.R. No. 296/2016 registered by Panchvati Police Station, Nashik for offence under Section 302, 307, 323, 143, 144, 147, 148, 149, 120-B of the Indian Penal Code, Section 135 of the Mumbai Police Act and Section 7 of the Criminal Law Amendment Act.

2. Heard learned counsel for Applicant and learned Additional Public Prosecutor for Respondent-State. Learned APP

submitted that by order passed by this Court dated 28th June, 2017 in Criminal Bail Application Nos. 314/2017 and 648/2017 while allowing Applicants to withdraw the Applications, trial was expedited, and directed to be concluded within twelve months from the date of receipt of the order. Learned APP, on the instructions of investigating officer, makes statement that till today trial has not been commenced. In the background of above, learned counsel for Applicant submitted that no role is attributed to Applicant in the present crime except for mentioning his presence at the scene of offence alongwith 20 other co-accused and to substantiate this submission, he relied upon statement of Mandabai mother of Sunil Wagh and statement of Hemant, brother of deceased.

3. Learned counsel for Applicant to establish innocence of Applicant in the present case relied on statement of eye witnesses who were initially referred as witness 'B' and witness 'C', as that time proposal for invoking provisions of MCOC Act was pending. However, contended that as proposal was rejected these two witnesses are referred as Sachin Jagtap and Keshav and by referring to their statements submitted that even their statements do not establish

involvement of Applicant.

4. It is submitted that no name of Applicant is mentioned in the FIR lodged by the injured eye witness, mother of deceased and recorded immediately after the incident and Applicant's involvement for the first time is established from the additional statement of Hemant, wherein he has attributed role to Applicant to be co-accused armed with stick. By referring to the statement of eye witnesses, it is also submitted that if their version is to be relied, that all 20 accused simultaneously opened assault on some one, then in that case there has to be number of injuries sustained by the injured. However, in the case in hand, it is submitted that no such injuries are found except for head injuries sustained by Sunil, which is attributed to co-accused Kundan by stone which is also certified to be a cause of death of deceased. It is also submitted that no injury report of Mandabai is on record, which according to the learned APP, on instructions, is not filed with the charge-sheet as she has not sustained any grievous injury. It is therefore, submitted that application is liable to be allowed as from the available material, no involvement of Applicant can be specifically made out as author of any of the injuries sustained by deceased Sunil

or by his brother Hemant.

5. Learned APP has opposed application contending that bail application of co-accused Vyankatesh Nanasaheb More has been rejected by this Court. However, it is submitted that co-accused Vyankatesh is attributed with specific role on the basis of contents of statement of injured Hemant. Same is not the case of Applicant who is attributed with general role of his presence at the scene of offence, having armed with sticks. Learned APP has referred aforesaid statement and also contended that trial is yet to be commenced though the same is expedited by this Court vide order dated 28th June, 2017 and which has to be concluded within twelve months from the date of receipt of said Court. In fact, it is noted that this Court has granted liberty to those Applicants to file fresh bail application, in the event trial is not concluded within 12 months. In the background of above undisputed facts, learned APP to establish involvement of Applicant, apart from additional statement of Hemant and of witnesses Sachin Jagtap and Keshav, has further invited attention on the statement of Ramdas Changle and has contended that in his statement Applicant is specifically involved as one of the assailants alongwith co-accused,

and submitted that in view of available material against Applicant his involvement is prima-facie established, application be rejected.

6. In the background of submissions advanced as aforesaid, before considering other evidence, from perusal of statement of Ramdas Changle recorded under Section 164 Cr.P.C., it is noted that the same is recorded on 7th of July, 2016 in respect of incident which has occurred on 27th May 2016 i.e. almost after 1½ months. In that statement only role attributed to Applicant is of having armed with sticks and of interception of Hemant and deceased Sunil. It is material to note that neither complainant Mandabai, injured Sunil nor eye witnesses Sachin Jagtap, Keshav in their statements, which were recorded much earlier to the statement of Ramdas Changle had attributed any role to Applicant intercepting Hemant or deceased Sunil.

7. In that view of the matter, no role can be attributed to Applicant except for his presence on the spot, armed with stick, which prima-facie, appears to be a general statement. It is material to note that no name of Applicant is mentioned in it, though same is lodged immediately after the incident of murder of the deceased, who is also

injured and eye witness. As what is stated in the report is that on 27.5.2016 at about 8.30 p.m. when deceased Sunil was engaged in serving his client on Pani-Puri stall, he noticed that Kundan Pardeshi, Karan Ravi Pardeshi and 7-8 others approached him and as relations between Sunil and co-accused were strained since prior to the incident, Sunil apprehending assault on him, ran away, his brother also followed him. It is further stated that Kundan Pardeshi and his men committed assault on Hemant and Sunil by sticks and stones and complainant further claims that when she intervened their assault, she was also subjected to assault by sticks on her back and co-accused Kundan Pardeshi in the course of same transaction assaulted Sunil by stone on his head, due to which he sustained bleeding injury.

In view of report as aforesaid, no name of Applicant mentioned therein. As such, presence of Applicant on the spot is doubtful. In the light of above, perusal of statement of Hemant, recorded one day after the incident, reveals name of Applicant stating that at the time of incident of assault as aforesaid i.e. when Kundan committed assault by stone on the head of Sunil, co-accused Akshay Ingale, Ravi Pardeshi committed assault on his right leg and other

parts of the body while Applicant alongwith Ajay Borisa committed assault by sticks and stone on his head and all co-accused committed assault on him and his brother Sunil.

Documents filed with charge-sheet further reveals that additional statement of Hemant came to be recorded on 1.6.2016 by the Magistrate while he was in the hospital. In this statement, Hemant has not named any of the assailants, much less the Applicant, and what is stated by him is that on the day of incident when he was present with his brother and mother at their Pani-Puri still, all of a sudden mob of 15-20 persons came running to them and committed assault on them by stones and wooden log of spade. In view of contrary statement of Hemant as aforesaid, it cannot be said that statement of Hemant exclusively establish presence of Applicant as assailant, as stated by him in the earlier statement. No explanation is putforth by the prosecution, requiring investigating agency to record additional statement of Hemant on 1st June, 2016, which absolves involvement of Applicant.

8. In the background of statements of complainant and injured Hemant, perusal of statement of Sachin Jagtap would reveal

that on the day of incident at 8.30 p.m. when he was present near the spot near Hanumanwadi corner, he saw Mayur @ Munna Kanade, Jayesh Dive, Kundan Pardeshi Kiran Nangre, Karan Pardeshi, Ravi Pardeshi, Srinivas Kanade, Gaurav Mali, Ganesh Kalekar, Akash Jadhav, Mayur Bhavsar, Pravin Rajput, Nikhil Jadhav alongwith Applicant and 4-5 persons, armed with sticks and on seeing them Hemant and his brother Sunil ran away from the spot, who were intercepted by them and was assaulted by sticks. He has further stated that in the course of same transaction, Kundan Pardeshi committed assault on head of Sunil by big stone, which was lying on the spot. Similar is statement of Keshav. From the statement of these witnesses, thus, presence of Applicant alongwith co-accused only is established, but all are stated to have committed assault by stick on Hemant and Sunil Wagh, while Kundan is specifically stated to have assaulted Sunil on head by stone. Post Mortem notes reveal that deceased had sustained two lacerated injuries over right fronto temporal region of scalp and above right mastoid, and one contused abrasion over right forehead, of which corresponding internal injuries are mentioned in column 19 of said notes in the multiple comminuted fractures in

bilateral temporal, right side of frontal bone. The cause of death is certified to be blunt trauma to head. In view of above, though according to P.M. notes deceased was found to have sustained with as many as 14 other injuries, they are all in nature of abrasions. However, from the statement of eye witnesses, from the report, role of Applicant can not be attributed any such injuries, as there is a general allegation of assault by Applicant alongwith others on deceased as well as on Hemant.

9. In view of above discussion, evidence available against Applicant, there appears no reason to keep Applicant in custody, pending trial. At this stage, learned APP submits that Applicant has criminal antecedents, which is as under:

Sr. No.	Police Station in Nashik district	C.R. No.	Under Section
1.	Panchavati	356/2013	324, 34 of I.P.C.
2.	Sarkarwada	266/2012	326, 504, 506, 34 of I.P.C.
3.	Panchavati	119/2012	399, 420 of I.P.C. and 3 / 25 of Arms Act.
4.	Panchavati	296/2016	302, 307, 323, 143, 144, 147, 148, 149, 120-B, 109, 212 of I.P.C., 135 of Bombay Police Act and Sec. 7 of Criminal

			Law Amendment Act.
5.	Dindori	200/2017	65(a)(e)Maharashtra Prohibition Act with Sec. 108/177, 3/181, 130/3/170 of the Motor Vehicles Act.

In that view of the matter, application is liable to be allowed by imposing suitable conditions. Hence, following order:

- (i) Applicant shall be released on bail in C. R. No.296/2016, registered with Panchavati Police Station, Nashik, on his executing PR bond in the sum of Rs. 50,000/- with one surety in the like amount;
- (ii) Except for attending trial on its fixed dates, Applicant shall not enter the territorial jurisdiction of Panchavati Police Station, Nashik. Applicant shall provide proof of his residential address to the Investigating Officer at Panchavati Police Station alongwith proof of his residing at that address;
- (iii) While on bail, Applicant shall mark his presence to the police station within whose jurisdiction, he prefers to reside on the first day of each month

initially for a period of six months and thereafter bimonthly on the first of such month, pending the trial.

- (iv) Applicant shall not tamper with the witnesses in any manner nor shall get involved in any crime and if he is found involved in future, prosecution shall take recourse available under law for cancellation of bail;
- (v) Application is accordingly disposed of in the aforesaid terms.

Sd/-
[P. N. DESHMUKH, J.]

Vinayak Halemath