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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 463 OF 2018

Hanumant Tukaram Gadkar	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket U. Nikam i/b Aashish Satpute, for the Applicant.

Ms. Veera Shinde, APP for the Respondent.

Mr. R. J. Kale, PI Dighi Police Station, Pune.

CORAM : P. N. DESHMUKH, JJ.

DATE : FEBRUARY 26, 2018

PC :

1. Heard learned counsel for Applicant and learned Additional Public Prosecutor. Perused police report, which is taken on record and marked "X" for identification.

2. This application is filed for grant of bail by one of the accused – Hanumant Tukaram Gadkar in connection with C. R. No. 151 of 2017 registered for the offences under Section 302, 143, 147, 148, 149, 120(b) of the Indian Penal Code read with Section 4 (25) of the Arms Act and Section 135 of the Maharashtra Police Act.

3. It appears to be case of the prosecution as revealed from the report that one Chaya w/o of the deceased on 16.8.2017 at about 13.00 noon while she alongwith her husband Pramod and daughter Pradnya were present in the house, noticed that some persons were pelting stones on the house of nearby residents in their locality. Suspecting that complainant's son Pranit must be also involved in the said act, deceased Pramod went to the spot. However, as he did not returned for 7-8 minutes, complainant and their daughter Pradnya visited the spot and found that Pramod was lying on the road in the injured condition. Complainant further claims to have seen four persons hurriedly occupying one car bearing No. MH 21-V-7289 fled away from the spot.

4. From the report it appears that complainant on the spot inquired from persons who were present there and from them she learnt that 4 unknown persons who had fled in car had committed assault on her husband. Complainant shifted her husband with the assistance of one Nitin and her daughter Pradnya to the hospital where he succumbed to injury on 26.8.2017. Admittedly, injured was unconscious from the time of incident till the date of death on

26.8.2017 and thus, according to the prosecution case, his statement could not be recorded during this period.

5. In the background of above, learned counsel for the Applicant has submitted that from the contents of report, there is nothing to establish involvement of the Applicant in the present crime as assailant. It is further pointed out that even there is no test identification parade held in respect of Applicant though it is submitted that during the course of investigation TI parade is made in respect of other co-accused, who are said to be identified.

6. Apart from the contents of report, learned counsel for Applicant referred to statement of Pradnya. A perusal of said statement reveals that same is on the line of statement of her mother and thus, cannot establish involvement of Applicant as an assailant of deceased.

7. For the purpose of present application, learned counsel has further referred to statement of eye witness Santosh Dhanraj Pimpale and Pramila Pramod Shendage, and has contended that even though these two witnesses claim themselves to be eye witnesses of the incident, their statements do not establish involvement of Applicant as an assailant. Referring to the material witnesses as

aforesaid, it is further contended that there is no recovery effected from the Applicant in order to establish the criminal element. It is therefore, contended that Applicant is involved in false case. Though Applicant is innocent, he has been arrested on suspicion and his name is found in FIR. Applicant be released by imposing conditions.

8. Learned Additional Public Prosecutor by referring to the police report on record has contended that application be rejected since Applicant is involved in the serious crime and by referring to the statement of Sudarshan Dalvi has submitted that Applicant is part of conspiracy which came to be hatched alongwith other co-accused to commit murder of Pramod Dhumal as his son Vitthal was in love with one Anandi Kurhade, which is one side love affair and in that background, on 21st March 2017 he committed suicide. It is further case of prosecution that due to unfortunate suicidal death of Vitthal, Applicant alongwith other co-accused had conspired, of which outcome is murder of Pramod Dhumal.

9. In the background of case of prosecution as aforesaid, as already noted, there is nothing to establish involvement of Applicant from the police report nor from the statement of Pradnya. Except for

above statements, from the statements of alleged eye witnesses Santosh and Pramila, what can be said to have been established by the prosecution is of assault on head of deceased by one person by one “Koyta”. Their statements are totally silent as to who is the assailant of deceased. Both these statements, therefore, do not substantiate case of prosecution any further to establish involvement of Applicant. Even otherwise, one “Koyta” came to be seized from one of the accused involved in some other crime, registered for offences punishable under Section 363, 364(A), 365, 507 of Indian Penal Code on 22nd August, 2017.

10. The injury report on record dated 26th August, 2017 of Max Neuro Hospital does not reveal nature of injury sustained by deceased except for stating that deceased was admitted in unconscious condition, having head injury. However, from the further contents of this report, it reveals that initially deceased was referred to Y.C.M. Hospital, Pimpri where he was treated. On perusal of medical certificate, the only injury described is head injury in the form of contused lacerated wound over occipital region. As per the contents of medical report, deceased was found to be treated with head injury, as

according to Injury No. 1 in column No.17 sutured wound was found over occipital region of the head and five sutures were present. Having considered the nature of injury sustained as aforesaid, deceased must have sustained bleeding injury. However, there is no mention of finding of blood stains in the spot panchanama, nor the weapon recovered from co-accused is stated to be found having blood stains. In that view of the matter, there is no substance in the case of prosecution insofar as recovery of weapon from co-accused is concerned. Even otherwise, from the above discussions, evidence which is relied upon by prosecution, there is nothing to establish involvement of Applicant.

11. Having considered above stated material against Applicant, merely from the disclosure statements of co-accused Applicant's involvement in the present crime as one of the members of the conspiracy cannot said to be established.

12. For the reasons stated above, this application is allowed as per the following order:

- (i) Applicant shall be released on executing P. R. bond in a sum of Rs. 50,000/- with one surety in the like amount.

- (ii) While on bail, Applicant shall attend Dighi Police Station, Pune on 1st day of each month, initially for a period of six months and thereafter quarterly on the 1st day of each month.
- (iii) Applicant shall not tamper with the witnesses.
- (iv) Learned Trial Court shall not be influenced with the observations made hereinabove and shall independently evaluate the evidence in the trial.

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

Vinayak Halemath