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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3195 OF 2018

Samir Gaibu Sanadi

..Applicant.

V/s.

The State of Maharashtra

..Respondent.

Mr.Ashok M.Mundargi, Senior Advocate I/b. Mr.Jayant J. Bardeskar
for the applicant.

Mr.A.A.Palkar, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 1, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP
for the State.

2. After his arrest on December 1, 2016 for an incident dated December 2, 2015, the applicant came to be charge-sheet in crime No.231/2016 for offence punishable under sections 302, 307, 241, 323 read with 34 of the Indian Penal Code registered with Rajarampuri police station, District Sangli.

3. The prosecution case against the applicant is, Harish with

Balu, accompanied victim Rahul, Vicky @ Dhanwan Tingre, Uday Ashok Satyal and Shivdutt Satyal went to a Paan shop so as to confront accused Ali, who obstructed Shivdutt brother of the complainant.

4. A fight ensued between the two groups, two members of the complainants group namely, Rahul and Vicky @ Dhanwant Tingre lost their lives whereas complainant Harish suffered serious injuries.

5. The prosecution case is based on the versions of eye witnesses to the incident i.e. complainant Harish, Uday Satyal, Shivraj Satyal. So far as statement of complainant Harish is concerned, he is not attributing any serious role to the applicant in the commission of the crime in question. Whereas, witnesses Uday, Shivraj and others have stated in their statements that the applicant caught hold of Rahul Bandyagol and facilitated main accused Aliya to gave him stab injuries resulting into his death.

6. The submission of the learned senior counsel in the aforesaid backdrop is, there are no criminal antecedents, no recovery or any incriminating materials viz. blood stained clothes or weapon, no role of active participation with any weapon can be attributed to the applicant. He has also invited the attention of this Court to the

statement of Harish, the surviving victim in the crime, of not attributing any role to the applicant.

7. *Per contra*, learned APP oppose the claim based on the statements of Uday Satyal and Shivraj Satyal and prayed for rejection of bail.

8. The fact remains that the presence of the applicant on the spot can be inferred from the investigation. If the contents of the statements of eye witnesses is appreciated Harish, the complainant and also a victim speaks of physical presence of the applicant on the spot and act of supporting the main accused Ali by mere presence. Another eye witness namely Salim does not attribute any specific role to the applicant but for the main role to accused Ali.

9, So far as other eye witness Uday and Shivraj are concerned, they are attributing role to the applicant in supporting the main accused by catching hold of the victim Rahul.

10. Even if the said role attributed to the applicant by two eye witnesses Uday and Shivraj is considered on its face value, it cannot be inferred that there is any motive on the part of the applicant to commit serious offence of murder as he has not used any weapon but for an act in aid of the main accused Ali of catch holding deceased.

11. Apart from above, statements of the two eye witnesses are not supported by other piece of evidence viz. clothes which were seized from the applicant. No blood stains could be noticed on the said clothes. The statement of Harish, the victim in the crime in question is silent as regards the role attributed to the applicant of active participation. That being so, the applicant deserves to be released on bail. Hence the order :-

- i) The applicant be released on bail in Crime No.231/2016 for offence punishable under sections 302, 307, 241, 323 read with 34 of the Indian Penal Code registered with Rajarampuri police station, District Sangli upon furnishing P.R. bond of Rs.25,000/- with one or more sureties in the like amount;
- ii) The applicant shall not influence the prosecution witnesses or tamper with the evidence;
- iii) The applicant shall keep away from the revenue jurisdiction of Solapur till the charge is framed;
- v) The application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)