

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.166 of 2020

Bandu Damu Masal .. Applicant
Versus
State of Maharashtra .. Respondent

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Vilasini Balasubamanian i/b Jaydeep Mane for the applicant.
Mr. P.H. Gaikwad, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 9th DECEMBER 2020

P.C:-

1 The applicant is incarcerated since 25th June 2018 in relation to C.R.No. 1089 of 2018 registered by Hadapsar Police Station. The said C.R invoke section 115, 120B, 467, 468, 471, 302 read with Sections 511 and 34 of the IPC.

2 On investigation, charge-sheet has been filed and the application preferred by the applicant, pre-charge-sheet and on filing of charge-sheet came to be rejected.

3 With the assistance of the learned counsel for the applicant and the learned APP, I have perused the charge-sheet. Counsel for the applicant has placed reliance on an order passed

Tilak

by this Court in Bail Application of co-accused being Anant Modhve, Anand Bhope, Rajendra Shitole where the three applicants came to be released on bail by order passed by Hon'ble Justice Anuja Prabhu Desai on 31st October 2018. She submit that she has a better case than the said applicants and hence, his liberty be restored to him. She also rely on an order passed in case of co-accused Nitin Pise dated 20th December 2018 by Hon'ble Justice A.S. Gadkari.

4 The complainant is a police personnel and he state that on 2nd November 2017, when they were investigating into another crime, registered with Vishramwadi police station, a secret informer provided information that one Omkar @ Bunty and Bandu Masal i.e. the present applicant have accepted consideration of Rs.One crore for committing murder and advance of Rs.15 lakhs has been received by them. The interrogation began and the team could trace two persons by name Bunty @ Omkar Bendra and one Nitin Kumar Pise who gave them information that one person by name Vishnu Raskar and Anand Modhva has given the contract of killing one Mangesh Tupe and this contract was for Rs.One crore and advance amount was also paid. This resulted in registration of an offence and along with three other accused persons, the applicant was indicted as accused no.3. It is worthy to mention that the persosn who are alleged to have accepted some consideration for

the purpose of killing of Mangesh Tupe never executed the act of murder.

It is not understood as to how Section 302 has been invoked. The relevant section invoked against the present applicant would be Section 115 which prescribe punishment for abetment of offence punishable with death or Imprisonment for Life if offence is not committed. The penalty prescribed is Imprisonment of either description for a term which may extent to 7 years and shall also be liable for fine. Section 115 (Part 1) is attracted if a person abets commission of an offence punishable with death or Imprisonment for Life and if that offence is not committed in consequence of the abetment, whereas Part II prescribes the penalty if an act causing harm is done as a consequence of such abetment. Abetment of a thing is enlisted in the IPC in Section 107 and a person is said to abet doing of a thing if he invokes any person to do that thing or secondly encourages with one or more other person or persons in any stipulation for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or if he intentionally abets by any act of illegal omission the doing of that thing. Even assuming for a moment that Section 115 has been rightly invoked and applied against the present applicant, the maximum punishment is Imprisonment upto 7 years since the act has not been committed in consequence of the abetment.

5 Pertinent to note that while dealing with the bail applications of the three co-accused Anant, Anand and Rajendra, Hon'ble Justice Anuja Prabhu Desai has held as under :-

“11 It is also pertinent to note that the conspiracy to eliminate Mangesh Tupe was hatched in the year 2015 because of dispute between Mangesh Tupe and the applicants – Rajendra Shitole and Anand Bhope over the payment of sale consideration. However, there is no prima facie material to indicate that there was any such dispute between the applicants and Mangesh Tupe as in the year 2015. On the contrary, the records prima facie indicate that there were several business transactions between Mangesh Tupe and the applicants till the year 2016. This fact prima facie indicates that their relations were cordial till 2016. Consequently, there was no reason or motive for the applicants to enter into a criminal conspiracy to eliminate Mangesh Tupe.

12 The nature of the allegations against these applicants, in my considered view, justifies grant of bail. Furthermore, the applicants Anant Modhve and Anand Bhope are in custody since 14/11/2017. The investigation is completed in all respects and presence of the applicants is not required

for the purpose of the investigation.”

6 The present applicant has been arrested in connection with the said crime on 25th June 2018 and it is 30 months since he is incarcerated. Learned A.P.P. states that till today, charge is not framed. In any contingency, the applicant is not alleged of any act which would attract Section 467, 468, 471 of the IPC. He is therefore entitled to be released on bail in light of the fact that till today, no charge is framed. Hence, the following order :-

O R D E R

Application is allowed.

- (a) The Applicant – Bandu Damu Masal shall be released on bail in connection with C.R.No. 1089/2018 registered with Hadapsar Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to the Court and shall not tamper with evidence.
- (c) The Applicant shall attend the trial on each date when it commence and make his attendance in

Hadapsar Police Station once in every month, till framing of charge.

SMT. BHARATI DANGRE, J