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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3404 OF 2019

Kalyan Dadaso Gawade

..

Applicant

Vs.

The State of Maharashtra

..

Respondent

...

Mr. Ashok Mundargi, senior counsel with Mr. Meghdeep Oak for the Applicant.

Ms. A.A. Takalkar, A.P.P. for the State.

...

CORAM: SMT. BHARATI DANGRE, J.

DATED : 7TH OCTOBER, 2020.

P.C:-

1. Being charge-sheeted for the offences punishable under Sections 307, 326 read with Section 34 of the IPC and Sections 3, 5 and 27 of the Arms Act in C.R. No.563 of 2018 registered with Loni Kalbhor Police Station, Pune, the Applicant is seeking his release on bail. In the C.R. registered on 28/07/2018, the Applicant came to be arrested on 11/02/2019 and since then he is incarcerated. The C.R. came to be registered on a complaint filed by one Gulab Uttan Bhandalkar.

AJN

2. In the complaint, he has stated that he is a resident of Gunware, Taluka Phalton, District Satara and is engaged in social work. He states that there was a discord between himself and Dayanand Sadashiv Gawade and Vijay Sadashiv Gawade from the last election, because of the political back-guard. Last year also on account of differences, complaints came to be lodged in the Police Station. He then reported that on 27/12/2018 at around 5.00 p.m. to 6.00 p.m. when he was approaching Barad from Gunware, he spotted Vijay Gawade near Piravali. One unknown person followed him and he shot at the Complainant and injured him. The bullet hit his back and he started bleeding and fell on the ground. He states that he did not know the person who fired at him but he can identify him, if presented.

3. On completion of investigation, the charge-sheet came to be filed against six accused persons and the Applicant is Accused No.5. During the course of investigation, two country made pistols were recovered under the recovery panchanama executed under Section 27 of the Indian Evidence Act from Accused No.3 - Dnyaneshwar Sabale. Two rounds of 7.65 MA pistol and five live cartridges were also recovered. From the spot, one cartridge and magazine were also recovered. The charge-sheet is filed to the effect that the agricultural land which the present Applicant i.e. Accused No.5 and his cousin brother (Accused No.6) were cultivating, was taken into possession by the Complainant Gulab Uttam Bhandalkar and his friends by executing an agreement to sell and, therefore, the dispute ensued between the Complainant and the accused. As a sequel to this, the

Applicant and his uncle (Accused No.6) - Vinayak Khombe engaged Accused No.2 - Amar Bendre and Accused No.3 - Vaibhav Bendre as slayer for contract killing of the Complainant for an amount of Rs.10 lakhs, out of which Rs.1 lakh was paid as advance and remaining was to be paid after the work was executed. The charge is to the effect that Accused No.6 - Vinayak purchased two country made pistols and 10 cartridges from Accused No.4 - Narayan Dnyaneshwar Sabale. It further states that Accused Nos.2 and 3 by riding their Bajaj 220 Pulsar Motorcycle followed the Complainant on the date of incident and fired at him with an intention to kill and injured him. The charge-sheet was, therefore, filed under Sections 307, 323 read with Section 34 of the IPC along with relevant provisions of the Arms Act.

4. I have perused the charge-sheet with the assistance of Mr. Mundargi, learned senior counsel for the Applicant and learned A.P.P. for the State. The Medico-legal certificate of the complainant reflect a grievous injury and the injury is a bullet injury with the wound entry site located on the right side of the back (para spinal region) - 2 cm x 2 cm and wound exit site is marked as middle anterior abdominal wall near umbilicus - 2 cm x 2 cm. The injury was described as grievous injury.

5. The charge-sheet also contains statements of the injured persons as well as other witnesses. The present Applicant is charge-sheeted for for awarding the contract for killing the Complainant and for conspiring with the said co-accused persons on account of the political rivalry.

6. Mr. Mundargi, learned senior counsel has taken me through the charge-sheet and invited my attention to the vast discrepancies in the statements of the complainant. According to him, the role attributed to the present Applicant is of giving the alleged contract to kill the complainant with the help of other accused. He, however, states that the FIR only contains mention of Vijay Gawade and one unknown person. According to the learned senior counsel, the Complainant then recorded his two additional statements but the same are recorded after two months of incident. According to Mr. Mundargi, there is variance in the said statements. He also assert that since the Applicant has lodged a complaint against the injured with the Phaltan Gramin Police Station on 28/12/2018, the present FIR is nothing but a counterblast. He would asseverate that in the charge-sheet except the role assigned by the co-accused, who had given the disclosure statement under Section 27 of the Indian Evidence Act, there is no material implicating the present Applicant. There is no eye-witness to the incident and all the witnesses speak on hearsay basis. Mr. Mundargi would place reliance on the order passed by this Court in the case of Vijay Gawade, who was alleged to be an accomplice. Recording that *prima facie* the evidence does not depict his involvement, he was enlarged on bail.

7. Learned Public Prosecutor strongly objects to the plea advanced by Mr. Mundargi and submit that the Applicant is the main accused. The statement of the Applicant which led to filing of the FIR has been briefly referred to above. It is included in the charge-

sheet at page 84-A. The complainant has named Vijay Gawade and an unknown person who has fired. On 29/12/2018, he gave a supplementary statement where he reiterated that when he was riding his motorcycle at around 5.00 p.m. and proceeding towards Barad, he was spotted by Vijay Gawade, who was proceeding towards the village. When he reached the Peer Darga, one unknown person fired at his back and he collapsed. When he fell down, he noted that Vijay Gawade and two unknown persons had come on motorcycles. Vijay Gawade was riding one motorcycle and the two unknown persons were riding the other. He has also stated that he heard Vijay Gawade uttering that this is the same man, who was asked to be killed by 'Saheb'. He threw stones at the assailants and gave the description of the unknown persons. His another statement is recorded after two months, which is at page 88 of the charge-sheet. It is recorded on 14/02/2019. In this statement, he makes a reference to the present Applicant and that he was cultivating a piece of land in Gat No.208. He also states that the Applicant and his uncle were restrained from cultivating since it was being purchased by him and he stated that in the past some verbal altercation had also ensued. The statement then contains an averment that he had gathered from the police that Kalyan Gawade was aggrieved because the land which was being cultivated by him and his uncle was subject matter of an agreement to sell by the Complainant and his friends and, therefore, the duo conspired to kill the Complainant. The statement then proceeds to state that Kalyan Gawade had approached the co-accused Vinayak Khombe and paid him Rs.1 lakh. Vinayak Khombe then approached Dnyaneshwar Sabale, a co-accused and purchased two country made

pistols and the plot was executed by Accused Nos.2 and 3 - Amar Bendre and Vaibhav Bendre respectively. While describing about the incident he has stated that Amar Bendre and Vaibhav Bendre had covered their faces and, therefore, he could not see them but he can identify if shown. It is at this stage, the Applicant has been named. The supplementary statement of the witnesses of Amol Kashi and Sanjay Gawali recorded on 12/02/2019 and statement of Dattatray recorded on 14/02/2019 referred to the conspiracy to which the Complainant had made a reference in his last statement and this is based on the discussion in the village and through the information gathered from the police. Pertinent to note that these statements are recorded in the form of supplementary statements and that too approximately 45 days after the incident. The effect of the delay in recording the statement implicating the Applicant in the said crime and it being based on hearsay will be determined during the course of trial. Further the variance in the statement of the Complainant which is noted above and its effect is also a matter of trial.

8. For the purpose of consideration of bail application, *prima facie* accusation against the Applicant and the gravity of the allegation would be worth consideration. The liberty of the Applicant will have to be juxtaposed as against fair trial to the Complainant by ensuring that the Applicant do not flee the course of justice and is available for trial.

9. The Applicant has been arrested on 11/02/2019. The investigation is complete, charge-sheet is filed. There is recovery of

weapons which were used for firing at the instance of the co-accused. Another co-accused Vijay Gawade, who has been named by the Complainant in his very first statement has been released on bail by this court on 11/02/2019 in Criminal Bail Application No.216 of 2019. Considering the nature of accusation against the Applicant and the material contained in the charge-sheet which would be required to be substantiated by the prosecution by adducing evidence at the time of trial, I see no reason why the Applicant should remain incarcerated pending the trial. The prosecution does not allege any criminal antecedents to the Applicant nor any apprehension is expressed that he will not be available for trial. Balancing right of the Applicant to be released on bail, in the light of the accusation against him and considering the role attributed to him in the entire crime and assuring that the Complainant would get a fair trial, the Applicant is entitled to be released on bail subject to the following conditions. The observations made here are a mere *prima facie* view and it is made clear that the trial court will not be influenced by it. Hence, this order.

ORDER

- (a) In the event of arrest, the Applicant – Kalyan Dadaso Gawade, shall be released on bail in C.R. No.563 of 2018 registered with Loni Kalbhor Police Station, Pune, on executing P.R. bond to the extent of Rs.25,000/- and furnishing 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 and shall not tamper with prosecution evidence.

(c) The Applicant shall co-operate and attend the trial regularly unless exempted by the Trial Court.

10. The Application is allowed in the aforestated terms.

11. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.