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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 242 OF 2020

Shri Rajesh Arjun Hatankar
@ Raju Patil

..Applicant

vs.

The State of Maharashtra

..Respondent

Mr. Satish B. Patil, for Applicant.

Smt.M.R. Tidke, APP for State – Respondent.

Mr.S.H. Kumbhar - PSI, Manpada Police Station present.

CORAM : M. S. KARNIK, J.

DATE: OCTOBER 4th, 2021

P.C. :

. Heard learned Counsel for the applicant. This is an application for bail for the alleged offences committed by the applicant along with other co-accused under sections 302, 120(B), read with section 34 of Indian Penal Code ('IPC' for short). The FIR is lodged on 21/12/2016 by one Mr.Amit Namdev Patil. Briefly stated it is the case of the prosecution that the informant and deceased Vivek Omprakash Sharma alias Vicky went on a trek to Harishchandragad on 21/12/2016. At around 1.45 p.m., the informant sat on the driver's seat of his car when he heard the sound

of firing. Vicky who was standing behind the car fell down as he was shot at by the assailants with a firearm. The assailants fled from the spot on motorcycle.

2. The offence is registered against as many as 10 accused, of which 7 are arrested and 3 are still wanted. My attention is invited to the order passed below Exhibit 16 in Sessions Case No. 93 of 2017 filed on behalf of co-accused Apurtraj Viraswami John. The Sessions Court had recorded that there is nothing on record to show about the exact role of the applicant Apurtraj. The allegation is of conspiracy. It is further recorded that there is nothing on record to support the submission of Investigating Officer that there is involvement of the accused Apurtraj in the said conspiracy. The co-accused - Apurtraj was therefore granted bail by the Sessions Court.

3. So far as another co-accused – Nagesh Pandurang Sonawale is concerned, he is alleged to have been in touch on his mobile with the assailants prior to the incident and at the time of incident. There is recovery at the instance of co-accused Nagesh of koyta. This Court observed that said koyta was not used in the commission of the offence and therefore enlarged co-accused Nagesh

on bail.

4. My attention is also invited to the order dated 07/02/2019 passed by this Court in Criminal Bail Application No. 2768 of 2018 in respect of co-accused - Rakesh alias Roshan Ramashankar Mishra. To support the prosecution case, reliance was placed on the memorandum statement of co-accused who was arrested wherein it was alleged that co-accused Rakesh is part of conspiracy and the assailants sought the help of Rakesh. This Court observed that there is no cogent evidence against the applicant-Rakesh to establish his involvement in crime. Considering that the applicant-Rakesh was in custody for more than two and a half years and there were no criminal antecedents against Rakesh, he is granted bail by this Court.

5. Again in respect of another co-accused Mohd. Mohiddin Shaikh alias Mohd. Takka, this Court observed that there is no recovery of any incriminating article at the instance of the applicant - Mohd. Takka and only allegation was that he was in touch on his mobile with the assailants prior to the incident. Considering that the co-accused Nagesh was granted bail, even co-accused Mohd. Shaikh

alias Mohd. Takka is enlarged on bail by this Court.

6. It is alleged by the prosecution that on account of political rivalry, Vicky was shot dead under mistaken impression that the deceased (Vickey) was the one to be killed. The assailants mistook Vicky for the complainant Amit Patil. There is no material on record to show the involvement of the applicant except for the prosecution stating that he is involved in the criminal conspiracy. There is no recovery of any incriminating article at his instance.

7. Learned APP submitted that the applicant has criminal antecedents and as many as 8 offences are registered against him. It is however pointed out that in respect of 5 of the offences, the applicant has been acquitted. Criminal cases pending are in respect of the alleged offences (i) C.R.No. 442/2013 under sections 393 read 34 of IPC registered with Naupada Police Station (ii) C.R. 445/2013 in respect of the offences under section 399 & 402 of IPC and iii) section 3, 25 of the Arms Act and under section 37(1), 135 of Maharashtra Police Act registered with Manpada Police Station and iv) C.R. No. 9/22 of 2010 under section 379 IPC registered with Nayaghar Police Station.

8. Considering the fact that there is no material on record to show the exact role of the present accused and that there is no incriminating material on record shown by the prosecution to connect the applicant, I find that as other co-accused are already released on bail, even present applicant deserves to be released on bail. The applicant has been in custody for more than 4 years and 9 months since he is arrested on 04/01/2017. However considering the antecedents, I am of the opinion that some strict conditions need to be imposed while releasing the applicant on bail. Hence, the following order.

ORDER

- i) The application is allowed.
- ii) The applicant is enlarged on bail on executing PR bond in the sum of Rs. 20,000/- with one or two sureties in the like amount in connection with the C.R. I- 645 of 2016 registered with Manpada Police Station.
- iii) The applicant shall not enter the area of Thane district except on the dates when the trial is fixed for hearing or with the prior permission of the trial Court.

iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses, or any person concerned with the case

v) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details if any, from time to time to the Investigating Officer of the concerned police station and shall report to the nearest police station close to his residence while he is staying outside Thane district on 1st Sunday of every month between 10.00 a.m. and 11.00 a.m. till conclusion of the trial.

9. Bail Application is disposed of.

(M.S. KARNIK, J.)