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

BAIL APPLICATION NO. 1371 OF 2020

Vyankatesh Nanasaheb More

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Aniket U. Nikam a/w. Mr. Ashish Satpute, Mr. Amit Icham and Mr. Piyush Toshnival for the Applicant.

Mrs. P.P.Shinde, APP for the Respondent -State.

Mr.Vishal Shukla a/w. Mr. Sanjay Singh and Mr.Ghanshyam Upadhyay i/b. Law Juris for the Intervenor.

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CORAM : V.G.BISHT, J.

RESERVED ON : 8TH DECEMBER, 2021

PRONOUNCED ON : 20TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 263 of 2018 registered with Panchavati Police Station, Nashik for the offences punishable under Sections 302, 120B read with 34 of the Indian Penal Code (the IPC), Sections 3, 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. Informant is brother of Kishor Ramesh Nagare (since deceased). On 10th July, 2018 at about 11.00 pm, he found deceased crying loudly in his name “Sachin Sachin” and therefore, informant rushed towards the ground. He saw some unknown persons assaulting deceased by means of sharp weapons. By the time, he reached the assailants had started fleeing away armed with sharp weapons on a motor cycle. He found deceased in a pool of blood. Deceased was rushed to the hospital but was declared dead. Informant accordingly lodged the First Information Report (FIR).

3. It further appears from the record that during investigation, his supplementary statement came to be recorded on 2nd August, 2018 wherein he stated that in test identification parade, he had identified accused Makrand Sunil Deshmukh @ Makya, Avinash Raosaheb Vani and Shubham Nivrutti Pandhare as assailants, who had assaulted deceased on the day of incident.

4. Mr. Nikam, learned Counsel for the applicant, submits that there is no evidence on record to show that applicant was one of the assailant. Learned counsel invited my attention to the statements of prosecution witnesses, namely, Arun Digambar Bidgar, Hemant @ Sonu Vishnu Sathe and Gayatri Vaibhav Misal. Although, there is extra-judicial confession given to prosecution witness Gayatri Vaibhav Misal by other accused but there is no reference of his name in the episode. According to learned Counsel, although, the prosecution has claimed antecedents against the applicant but since in the present case, there is no direct or indirect evidence against him. The only ground of antecedents would not disentitle the applicant from bail if otherwise he is liable to be released on bail. Learned counsel also placed reliance in case of **Maulana Mohammed Amir Rashadi Versus State of Uttar Pradesh and Another**¹ and, more particularly, paragraph 10 of the said judgment. For all these reasons, the applicant deserves to be enlarged on bail, argued learned APP.

1 (2012) 2 Supreme Court Cases 382

5. Mrs.Shinde, learned APP, assisted by learned Counsel for the intervenor, vehemently opposes the submissions by contending that applicant was the main conspirator and it is apparent from the statement of prosecution witness, namely, Hemant @ Sonu Vishnu Sathe. Learned APP invited my attention to the statement of prosecution witness, namely, Chetan Popat Leve in order to substantiate her submission. Moreover, there are antecedents. Having regard to the gravity of the offence, the applicant is not liable to be released on bail, argued learned APP

6. Perused investigation papers. I have also gone through the statements of witnesses referred to by either side. Admittedly, the FIR was lodged against unknown persons. Thereafter, the informant's supplementary statement came to be recorded on 2nd August, 2018. While giving the supplementary statement, informant referred the role in test identification parade and identified all accused. Makrand Sunil Deshmukh @ Makya, Avinash Raosaheb Vani and Shubham Nivrutti Pandhare as the accused persons to whom

he had identified. In the backdrop of test identification parade, he sought to give his supplementary statement. The fact remains that even in test identification parade, he was able to identify the above named accused but then there is no reference to the role of applicant.

7. The statement of Arun Digambar Bidgar, which is relied on by learned Counsel for the applicant, shows that on 10th July, 2018, accused Avinash @ Wamnya had called this witness but this witness avoided to go. The said accused enquired with this witness as to whether the deceased had reached home or not. This witness then verified whether deceased had reached home or not and after verifying the fact, informed said accused that deceased had not reached home. The said accused again asked this witness to reach in the open ground. Accordingly, he went there. He found in the darkness the said accused and other accused, namely, Makrand Deshmukh and Shubham Pandhare. Both were armed with sickles. When he enquired as to what is the matter, the said accused allegedly replied that they are going

to kill the deceased. Again, there is no reference or presence of applicant at the relevant time.

8. Then next statement is that of Gayatri Vaibhav Misal. According to her, accused Avinash Wani was known to her husband. On 10th July, 2018 at about 1.00 am in the night, the said accused along with Makrand Deshmukh visited their house and requested to allow them to sleep. When her husband enquired what is the matter, they replied that they had killed deceased by means of sickle.

9. According to this witness, her husband then asked them to leave the house. Even accused Makrand asked them to keep with them a pistol and cartridges for some days but they refused and asked them to leave the house. On the next day, this witness came to know about the death of deceased.

10. This is a sort of extra-judicial confession. But then again extra-judicial confession nowhere shows that the accused Avinash and Makrand had also told them that they had killed the deceased at the instance of applicant.

11. Then comes the material statement of Hemant @ Sonu Vishnu Sathe, which has been pressed into service by learned Counsel for the applicant and learned APP as well.

12. According to this witness, the applicant is a famous goonda and was in jail at the time of recording of his statement and also at the time of incident. Accused Makrand is his close friend. Whenever the applicant used to be taken to the Court, accused Makrand used to go to the Court to see him. According to him, in last week of June, he along with Makrand had been to the Court. At that time, the applicant and accused Makrand only had conversation and after conversation was over, this witness enquired with accused Makrand as to what was the subject of conversation. Accused Makrand then said that the applicant had asked him to do work for him and has also given a signal. When this witness further asked what was the nature of work, the said accused Makrand told that the applicant had asked him to take a wicket meaning thereby that somebody has to be killed and that he would come to know within few days.

13. The statement of this witness further shows that on 10th July, 2018, he was summoned by accused Makrand near Darga. Accordingly, he went there and found that accused Makrand, Avinash and Shubham going on a motorcycle. When this witness asked them, they told that they are going for the work of applicant. On the next day, this witness came to know about the death of deceased.

14. From the statement of this witness, it appears that at the relevant time, applicant was behind the bars. It seems that the prosecution is drawing inferences from the statement of this witness without any supporting evidence. There is no inculpatory evidence to establish that this witness had accompanied accused Makrand to the Court where accused Makrand and applicant had conversation which was not done in his very presence. According to him, later on, he came to know from accused Makrand that the applicant had asked him to take a wicket of someone. His statement is in nature of hearsay without any cogent supporting material.

15. From the above discussion, it appears that the prosecution is gathering strength only on the basis of inferences drawn from the statement of prosecution witness, namely, Hemant @ Sonu Vishnu Sathe which is not supported by any other cogent and convincing evidence. As far as criminal antecedents are concerned, in case of **Maulana Mohammed Amir Rashadi**, the Hon'ble Apex Court made the following observations :

“10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the court, etc”.

16. In the instant case also, except criminal antecedents, nothing is brought on record. I am concerned with the role of

accused in the present case and if *prima facie* satisfactory evidence is lacking then, in my considered view, the ground of antecedents alone will not disentitle the applicant from being released on bail, if otherwise on merits, he deserves to be released on bail.

17. For the aforesaid reasons, I hold that the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Vyankatesh Nanasaheb More shall be released on bail in C.R. No. 263 of 2018 registered with Panchavati Police Station, Nashik on his executing P.R. Bond in the sum of Rs. 20,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial Court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)