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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2395 OF 2021

Saeed Mazhar Munshi
@ Sayed Ahmed Mazharulhiq Munshi Applicant
Versus
The State of Maharashtra ... Respondent

ALONGWITH INTERIM APPLICATION NO.2467 OF 2021 IN CRIMINAL BAIL APPLICATION NO.2395 OF 2021

Mr. Mohammed Sameem KhanApplicant/Intervener

In the matter between

Saeed Mazhar Munshi
@ Sayed Ahmed Mazharulhiq Munshi Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Arun Rajput i/b. Shabnam Shaikh for Applicant in BA/2395/2021.

Mr. Nizamuddin Khan for Applicant/Intervener in IA/2467/2021.

Mr. Ajay Patil, APP for State.

Mr. Yerunkar, PSI, Bangur Nagar police station.

CORAM : SARANG V. KOTWAL, J.

DATE : 6th JANUARY, 2022
[THROUGH VIDEO CONFERENCING]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.718 of 2020 registered at Bangur Nagar Police Station, under Sections 302 r/w.34, 120(B) of the IPC r/w. Sections 4, 25 of Arms Act r/w. Section 37(1)(A) of the Maharashtra Police Act.
2. Heard Shri. A. Rajput, learned counsel for the applicant and Shri. A. Patil, learned APP for the State.
3. The FIR is lodged by the eye-witness Mohd. Shamim Khan. He has stated that he was knowing the accused viz. Nadim Munshi, Nazeem Munshi, Sohail Munshi, Shafiq Munshi, Rizwan Munshi and other. They were residing in his area. The informant's brother/deceased Mohd. Ameen Tajmohammad Khan and the applicant's co-accused used to supply electricity to the residents unauthorisedly. Subsequently, the deceased changed his track and decided to help the people by providing legal connection. Because of that, the co-accused suffered financially and decided to kill the deceased.
4. It is alleged that on 16.12.2020, co-accused Nadim Munshi met the deceased at market place and threatened him. On 17.12.2020 at 10.00 p.m. the informant was present in his house with his sister-in-law. He heard a

loud shout. He and his sister-in-law rushed to the spot and they saw that his brother/deceased was lying injured on the ground. The accused Nadeem and Sathe were assaulting the deceased with a Koita and a big knife. He was brutally assaulted and then the assailants went away. The informant and his friends immediately carried the deceased to Cooper Hospital where he was declared dead. This is the prosecution story. The allegation against the applicant that he had conspired with the co-accused. It is not the prosecution case that he was present at the spot.

5. Learned counsel Shri. Arun Rajput for the Applicant submitted that the applicant is falsely implicated in the matter. There is no evidence on record except the statement of Inayat Thakur.

6. Learned APP opposed the application and relied on the statement of Inayat Thakur. I have considered the submissions and considered the averments of the application. I have perused the charge-sheet.

7. Apart from the first informant, there are statements of eye-witnesses namely Kafil Ansari, Mohd. Anis Shaukatali Idris etc. All of them have consistently stated about the assault committed by the main accused Nadim and nobody has stated that the applicant was present at the spot. Therefore, the only evidence against the applicant is the statement of Inayat Thakur.

He was a tenant in the house of the present applicant. He has stated that the applicant's son used to abuse him and used to tell him to vacate their room. It is his case that the applicant used to instigate his son to kill Amin. He has stated that at about 15-20 days prior to that incident, he saw that at about 11.00 p.m. the applicant and his sons were discussing sometimes in low voice. They were discussing about committing murder of deceased. As soon as they saw this witness, they stopped discussing and threatened him. After that this witness went home.

8. This statement is the only evidence against the applicant and in my opinion it is the weak piece of evidence. From the statement, it appears that the applicant's son were asking him to vacate the room. Therefore, he was holding grudge against the applicant's family. It is rather unbelievable that the applicant would discuss plan of committing murder of the deceased which could be heard by the outsiders. According to the case of this witness himself, they were discussing in very low voice. Apart from that, this witness had not taken any steps to inform the deceased to save his life. At this stage, sufficient ground is made out for grant of bail. Hence, the following order :

- : ORDER :-

(i) In connection with C.R.No.718 of 2020 registered at Bangur Nagar Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(ii) The Application stands disposed of accordingly.

(iii) In view of disposal of Bail Application, IA/2467/2021 does not survives and the same is disposed of accordingly.

(SARANG V. KOTWAL, J.)