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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2119 OF 2015

Mayur Gadekar Applicant
V/s.
The State of Maharashtra Respondent

WITH
CRIMINAL BAIL APPLICATION NO.538 OF 2016

Balasaheb @ Aba Gautam Torane Applicant
V/s.
The State of Maharashtra Respondent

Mr. Vikas B. Shivarkar, for the Applicantin B.A.
No.2119 of 2015
Mr. Rupesh A. Zade, for applicant in B.A.No.538 of
2016
Mr. Y. M. Nakhwa, APP for for the Respondent State in B.A.No.2119 of
2015
Mr. Arfan Sait, APP for State in B.A.No.588 of 2016
Mr. Atul Mali, PSI, Hadapsar Police Station.

CORAM : A. M. BADAR, J.

DATE : 30th JUNE, 2016.

P.C. :

1. The applicant/accused Mayur Gadekar in Application No.2119 of 2015 and applicant/accused Balasaheb Torane in Application No.538 of 2016, in C.R.No.164 of 2015 for offences punishable under Sections, 302, 1201, 120(b), r/w 34 of the Indian Penal Code, under Section 4(25) of the

Arms Act and under Section 35 of the Maharashtra Police Act, registered with Hadapsar Police Station, Pune, by these applications are praying for releasing them on bail, during pendency of trial.

2. Heard the learned counsel appearing for the applicants. They argued that the entire case of prosecution is based on circumstantial evidence. It is further argued that nothing came to be recovered from applicant Mayur Gadekar, in order to show his complicity in the crime in question. The alleged recovery is from co-accused Balasaheb. The blood stained clothes are stated to be recovered at the instance of Balasaheb. The relevancy of this piece of evidence is not pointed out by the prosecution. It is further argued that even prior to this alleged recovery, the officer who recorded memorandum statement had reported to his superior officer that nothing could be recovered from accused persons.

3. As against this, the learned APP opposed applications by pointing that the deceased was done to death in most brutal manner. It is further argued that applicant and co-accused conspired to eliminate the deceased by taking him to the spot of incident. He was murdered by present applicants as well as co-accused. According to learned APP two witnesses namely Bharati and Vanita have stated that applicant Balarasheb @ Aba Torane was lastly seen with the deceased.

4. Perused the charge sheet. Mohan Makwana died in the night intervening 13.04.2016 to 14.04.2016. The postmortem report shows that his death is homicidal in nature. His dead body was found near Kaccha road leading towards Syrum Company.

5. The F.I.R. came to be lodged by the brother Pravin on 14.4.2015 by suspecting four persons including co-accused Sachin Bhosale. It is averred that prior to 1 ½ years of the incident, Sachin Bhosale and his associates have assaulted Mohan Makwana (since deceased) in a dispute over a woman.

6. Bharati Rathod the sister of deceased and Vanita Makwana the sister-in-law of the deceased in their statements recorded under section 161 of Code of Criminal Procedure, have stated that they had seen deceased Mohan going on Scooter, with applicant Balasaheb @ Aba Torane at about 9.30 p.m. on 13.4.2015.

7. In his letter dated 19.4.2015, Assistant Police Inspector, Hadapsar Police Station reported the Senior Police Inspector that he made interrogation with applicant Mayur as well as co-accused, but nothing could be recovered from them on 28.4.2015. On the basis of discovery statement of applicant Balasaheb @ Aba, the clothes allegedly worn by accused persons, so also mobile phones came to be seized. The clothes are reported to be being reddish colour stains.

8. On 28.4.2015, voluntary disclosure statement of applicant Mayur Gadekar came to be recorded, but nothing was recovered. Though it is alleged that there is evidence in the form of Call Detail Record, nothing is filed with the chargesheet. During the course of hearing, the learned APP has handed over some statements showing Call Detail which is not even accompanied by necessary certificate as required by Section 64 of the Indian Evidence Act. This Call Detail Record shows the presence of concerned persons at "Sade Satara Nali", Hadapsar. The dead body was found near Syrum factory. As such so called document is of no assistance to the prosecution. It is well settled in cases based on circumstantial evidence, the chain of circumstance is required to be so complete so as to exclude all hypothesis that the crime in question is committed by some other person than the accused. Considering the nature of evidence against present applicants, their pre-trial detention is not warranted and therefore, the following order.

Order

- I) Applications are allowed.
- II) Applicants arrested in connection with above crime be released on bail on their executing P.R. Bonds in the sum of Rs.25,000/-by each of them and on his furnishing sureties in the like amount by each of them.

- III) The applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.
- IV) The applicants shall attend the trial scrupulously and shall co-operate the trial Court in expeditious disposal of case.
- V) The applicants shall not tamper with the prosecution evidence in any manner.

[A. M. BADAR, J.]