



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2344 OF 2021

Anil s/o Janardhan Gavade
Age 37 years, Occ. Business & Agri.
R/o Near Hanuman Mandir,
Malharwadi, Rahuri, Ta. Rahuri
District Ahmednagar.

... **APPLICANT**
(Orig. Accused No.5)

VERSUS

1. The State of Maharashtra
Through its Investigating Officer,
Rahuri Police Station,
Tq. Rahuri, Dist. Ahmednagar.
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
2. Savita w/o Rohidas Datir,
Age 39 years, occ. Machine Work,
R/o Malharwadi Road, Undewasti,
Rahuri, Tq. Rahuri, Dist. Ahmednagar
Mob. No. 8208494866

... **RESPONDENTS**

.....
Mr. N.B. Narwade, Advocate for applicant
Mr. V.K. Kotecha, A.P.P. for respondent No.1.
Mr. N.R. Shaikh, Advocate for respondent No.2 (appointed)

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 22nd December, 2023
Date of pronouncing judgment : 3rd January, 2024

JUDGMENT (PER R.G. AVACHAT, J.) :

By this application, under Section 482 of the Code of
Criminal Procedure, quashment of Sessions Case No.128/2021,

pending before the Sessions Court, Ahmednagar which is registered pursuant to F.I.R. bearing Crime No.0286/2021, registered with Rahuri Police Station, District Ahmednagar for the offences punishable under Sections 302, 201, 120-B, 212, 363, 364, 341 is sought.

FACTS :-

2. The First Information Report (F.I.R.) has been lodged by widow of the deceased Rohidas on 6/4/2021 by 3.00 p.m. It has been averred in the F.I.R. that, her husband Rohidas (deceased) was a Press Reporter by profession. The informant along with her husband and family members would reside at village Malharwadi, Unde Vasti, Rahuri. Deceased Rohidas left the house for Rahuri by 8.00 in the morning on 6/4/2021 on his Scooty (MH-12/JH-4063). Sambhaji Varale, friend of deceased Rohidas made a call on cell phone of the informant. He told her that, unknown person abducted Rohidas in a white Scorpio from the place nearby Keshav Mangal Karyalaya. She, therefore, rushed there to find the Scooty at that place. The Chappals of the deceased were also lying there. She, therefore, immediately made a call on the cell phone of her husband (deceased). It was found to have been switched off. The informant, therefore, approached the Police Station and reported the incident. Initially, crime for the offences punishable under Sections 341 and 363 of the Indian Penal Code came to be

registered.

3. The informant on the same day gave a supplementary statement. It has been stated therein that, there was a dispute over 18 acres of land situated at Rahuri. The dispute was between one Kanhu More (accused No.1) and the original owner of the said land. The deceased Rohidas was supporting the land owner. He had published the matter in a newspaper. It is also her case that, the main accused Kanhu More tried to dodge the Scooty with his Scorpio vehicle. It has further been stated that, one Karbhari Mangurde and his two sons had made encroachment on public land. The deceased had, therefore, made a complaint to the Municipal Council, Rahuri. In short, the informant suspected involvement of these persons in abduction of her husband.

4. During the course of investigation, dead body of Rohidas was found. Injuries were noticed on his person. Section 302 of the Indian Penal Code, therefore, came to be invoked. Balasaheb Mangurde and his two brothers were found to have not been involved in the crime. Charge sheet came to be filed against Kanhu More and 5 others including the present applicant.

5. Close reading of the charge sheet and the police papers would indicate that it is the case of the prosecution that

Kanhu More and accused Nos.2 to 4 namely Taufik Shaikh Arjun Mali and Akshay Kulthe abducted the deceased and committed his murder. The present applicant is alleged to have been in conspiracy with all of them to eliminate the deceased. He is also alleged to have harboured those 4 assailants. Section 212 of the Indian Penal Code has, therefore, been invoked against the applicant.

6. Heard. Learned counsel for the applicant would submit that, it is a case of no material to proceed against the applicant for any of the offences. According to him, although the applicant drove the deceased to a particular place post the crime, there is nothing to indicate him to have knowledge of the main culprits who have committed the offence in question. He would further submit that, so far as regards the offence of criminal conspiracy is concerned, there is no shred of material. The trial Court has framed the charge for the offence under Section 302 read with 120-B of the Indian Penal Code against the applicant. He, therefore, urged for quashing of the entire proceedings.

7. The learned counsel appointed to represent the respondent No.2- informant and the learned A.P.P. would, on the other hand, submit that, there could hardly be direct evidence of the offence of conspiracy. Involvement of a culprit in such offence could only be ascertained from surrounding circumstances, conduct

of the accused and knowledge. Three circumstances have been adverted to, namely, statement of widow of the deceased, crime scene panchanama and the statement of brother of the applicant. Reliance on the judgment of the Apex Court in case of **Rajiv Kumar Vs. State of U.P. & anr. [AIR 2017 SC 3772]** has been placed to ultimately urge for rejection of the application.

8. Considered the submissions advanced. Perused the relevant police papers. As per the case of the prosecution itself the murder was committed by Kanhu More (accused No.1) and his three associates – accused Nos.2 to 4. The applicant is not alleged to have been directly involved in the crime in question. The F.I.R. was lodged against unknown person. The informant, in her supplementary statement, suspected involvement of co-accused Kanhu More and others. The question is, whether there is material to proceed against the applicant for the offences punishable under Sections 302 and 212 read with 120-B of the Indian Penal Code and related offences.

9. Section 120-B of the Code of Criminal Procedure reads thus :

“120-B. Punishment of criminal conspiracy :—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death,

imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months or with fine or with both..”

10. In case of Rajiv Kumar (supra), it has been observed : -

“44. The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.”

11. Involvement of an accused in the crime can be made out by pointing out him to be an accessory before commission of the crime, at the time of commission of crime or post commission of

the crime. The record indicates the present applicant to have friendly relations with the co-accused Kanhu More. That is, however, not sufficient to rope him in the offence of conspiracy to commit murder. Our attention has been adverted to a statement of the widow of the deceased, recorded about a month after the alleged incident. It has been stated therein that, once her husband (deceased) had informed her that the present applicant was an associate of main accused Kanhu More. The applicant would keep watch on the movements of the deceased. The statement is conspicuously silent to state as to when the deceased had shared this information with her. This alleged statement would not be covered by Section 32(1) of the Evidence Act. There is nothing to indicate as to why she did not disclose the same in the F.I.R. or in her first supplementary statement. There is no material to indicate the present applicant to have had kept watch on the movements of the deceased on the day of the incident or within a period in proximity next before the crime in question. The facts in the case of Rajiv Kumar (supra) were altogether different. The involvement of the co-accused **Smt. Neela Yadav** was writ large therein. She was, therefore, convicted for the offence of conspiracy. Factual matrix of that case are found in paragraph No.47 of the judgment which are reproduced hereinbelow :-

“47. So far as the role of co-accused appellant

Neera Yadav is concerned, at the relevant time both the appellants were public servants. Neera Yadav played a specific role facilitating the appellant Rajiv Kumar to obtain plot No.27 in Sector-14A at less premium. Being CCEO of NOIDA, appellant Neera Yadav signed various notes put up before her like Ex. Ka-34 (15.10.1994), conversion of “guest house” to “residential” and allotment of plot No.27 in Sector-14A. On perusal of the exhibits, it is clear that appellant Neera Yadav was involved in all the stages of conversion of the “guest house” to “residential”, in violation of rules allotment of plot No.27 to appellant and also allotment of additional area to the appellant Rajiv Kumar. Often conspiracy is hatched in secrecy and for proving this offence substantial direct evidence may not be possible to be obtained. The evidence and materials on record amply show that there was a prior concert of minds of the appellants in conversion of the “guest house” into “residential” and allotting the same to appellant by flouting the rules and the circular.”

12. Then what is relied on are the statements of brother of the applicant and one Ravindra Kale and Abasaheb Patil. The statement of Ajay Gavade (brother of the applicant) would indicate that, on the day of the incident, the applicant was at home. Ajay had come from Pune for death anniversary of their grandmother. The applicant left the house by 6.00 in the evening. He did not come home on that day. The applicant informed his brother that Kanhu More has committed murder of the deceased Rohidas. The other two statements namely of Ravindra Kale and Abasaheb Patil

would indicate that Kanhu More along with his 3 associates had first been to the resident of Ravindra Kale. Kanhu More parked his white Scorpio behind the house of Ravindra Kale. He made a phone call to the present applicant and asked him to collect a sum of Rs.1,50,000/- from his residence. The applicant obliged and came to a particular place i.e. near Hotel Sai Shraddha. From that place, he drove Kanhu More to the house of Abasaheb Patil. There the applicant asked for liquor. Since no liquor was available, the applicant left that place.

13. There is strong material to indicate the applicant to have been close associate of the main accused Kanhu More. At Kanhu More's instance he collects money from his residence. Then drove him in a blue car to Hotel Sai Shraddha. From that place he drove the main accused Kanhu More to the place of witness Abasaheb Patil. In spite of there being death anniversary of his grandmother, he did not return home. His cell phone was found switched off. These facts indicate the applicant to have been involved in assisting the main accused Kanhu More and his associates post commission of the crime. The applicant can be said to have committed offence of harbouring offender. So far as circumstance relating to scene of offence panchanama wherein the applicant is stated to have distributed sum of Rs.1,50,000/- among the co-accused is concerned, the same is also conduct post

commission of the crime.

14. It is reiterated, there is nothing to indicate the present applicant to have been accessory before or at the time of commission of the crime. He, therefore, cannot be charged with an offence of conspiracy to commit murder. So was the conclusion of the investigating officer recorded on page 82 of the Charge Sheet. For better appreciation, the relevant matter in that regard is reproduced below :

“एकंदरीत सदर गुन्ह्याचे झाले तपासात कॉलम नंबर १० मधील आरोपी नामे १) कान्हू गंगाराम मोरे, वय ४६ वर्षे २) तोफीक मुक्तार शेख, वय २१ वर्षे ३) अर्जुन उर्फ लाल्या विक्रम माळी, वय २५ वर्षे ४) अक्षय सुरेश कुलथे, वय २० वर्षे, हे गुन्हा घडण्याचे आठ दिवस अगोदर राहुरी शहरातील गट नंबर ४२७ मधील अठरा एकर शेतात झालेल्या प्लॉटींग नंबर ३ मधील ड्रेनेज लाईनचे झाकणाजवळ बसुन एकत्र येवुन, यातील मयत रोहिदास राधुजी दातीर वय ४९ वर्षे रा. उंडे वस्ती मल्हारवाडी रोड राहुरी, याचेशी यातील मुख्य आरोपी कान्हू गंगाराम मोरे याचे सोबत गणेगाव येथील गट नंबर २०३ सर्वे नंबर ४६ चे शेत जमीनीतील डॉ. स्वप्नील माधवराव माने यांचेशी मा. न्यायालयात वाद सुरु असुन, याबाबत यातील मयत रोहिदास राधुजी दातीर हा डॉ. माने यांचे वतीने मा. न्यायालयाचे कामकाज पाहत होता व वेळोवेळी त्याचे दक्ष झुंजार पत्रकार या वर्तमान पत्रामध्ये बातमी टाकुन बदनामी करण्याची धमकी देत असल्याने, त्याचेवर पाळत ठेवुन, येत्या आठ दिवसात त्याचे अपहरण करुन, त्याला जिवे ठार मारुन, त्याचे प्रेताचे विल्हेवाट लावणेबाबत फौजदारी पात्र गुन्ह्याचा कट रचला होता. यावरुन सदर गुन्ह्यातील आरोपी नंबर १ ते ४ भादवि कलम १२० (ब) प्रमाणे गुन्हा केल्याचे तोहमत असे.

यातील आरोपी क्रमांक २) तोफीक मुक्तार शेख याने यातील

मयत रोहिदास राधुजी दातीर याचेवर दि. ०६.०४.२०२१ रोजी पाळत ठेवून, त्याचे बाबत आरोपी नंबर १) कान्हू गंगाराम मोरे ३) अर्जुन उर्फ लाल्या विक्रम माळी ४) अक्षय सुरेश कुलथे, यांचे संपर्कात राहून आरोपी क्रमांक १ याची स्कॉर्पीओ गाडी क्रमांक एमएच १७, एंझेड ५९९५ हिचा वापर करून, यातील मयतास जिवे ठार मारण्याचे उद्देशाने त्याचा रस्ता आडवून, त्यास आरोपी क्रमांक १ याचे वरील गाडी मध्ये बळजबरीने घालून पळवून नेल्याचे आरोपी क्रमांक १ ते ४ यांनी भादवि कलम ३६३, ३६४, ३४१ प्रमाणे गुन्हा केल्याचे तोहमत असे.

यातील आरोपी क्रमांक १ ते ४ यांनी यातील अपहरीत व्यक्ती नामे रोहिदास राधुजी दातीर यास स्कॉर्पीओ गाडीत घालून पळवून, दरडगाव थडी शिवारात फॉरेस्ट मध्ये नेवून, त्यास जिवे ठार मारण्याचे उद्देशाने लोखंडी पाईप व दगडाने मारहाण करून जिवे ठार मारून खून करून, त्याचा मृतदेह स्कॉर्पीओ गाडीत टाकून, पुरावा नष्ट करण्याचे उद्देशाने त्याचे प्रेत रोटरी क्लब ब्लड बँके जवळ फेकून देवून, पळून जातांना यातील मयताचा मोबाईल फोन फेकून दिला यावरून आरोपी १ ते ४ यांनी भादवि कलम ३०२, २०१ प्रमाणे गुन्हा केल्याचे तोहमत असे.

यातील आरोपी क्रमांक ५ अनिल जर्नाधन गावडे रा. राहुरी (फरार) याने आरोपी नंबर १ ते ४ यांना ते गुन्हा करून पळवून आल्यानंतर त्यांना आश्रय देवून, आर्थिक मदत करून, त्यांना स्वतःचे वाहनात फरार होण्यास मदत केली आहे म्हणून यातील आरोपी नंबर ५ याने भादवि कलम २१२ प्रमाणे गुन्हा केल्याचे तोहमत असे.”

15. For all the aforesaid reasons, in our view, the application partly succeeds. The proceedings in Sessions Case No.128/2021, pending before the learned Sessions Court, Ahmednagar, for the offence punishable under Section 302 read with 120-B of the Indian Penal Code stands quashed so far as regards the present applicant is concerned. Needless to mention,

the applicant shall be proceeded against for the offence punishable under Section 212 of the Indian Penal Code and the related offences, if any.

The Criminal Application stands disposed of.

16. Fees of Mr. N.R. Shaikh, learned appointed counsel for respondent No.2 is quantified at Rs.15,000/- (Rupees fifteen thousand).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-