

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO.1843 OF 2013**

Jawahar Chellaram Bijlani @

Suresh Bijlani

..Applicant.

versus

The State of Maharashtra

..Respondent.

.....
Mr. N.N. Gawankar with Mr. Samir A. Vaidya for the Applicant.

Smt. P.H. Kantharia, Addl. P.P. for the Respondent – State.

Mr. Sanjeev Sawant i/b Mr. Himanshu Kode for the Intervener.

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CORAM : M.L. TAHALIYANI, J.**23 December 2013.****P.C. :**

The Applicant has moved this Court for grant of bail under Section 439 of the Criminal Procedure Code. The Applicant is one of the accused in Sessions Case No.281 of 2013 of Thane District. The said case was initially registered at Vashi Police Station vide Crime No.I-67 of 2013. Thereafter it was taken up by D.C.B., C.I.D. and further investigation was carried out. The Applicant is accused of offence of conspiracy to kill the deceased Sunil Kumar Lohariya.

2. There are in all 11 accused who are charge-sheeted and some more accused are required to be arrested. The assailants involved in the assault on the deceased had used firearms and sharp weapons. The deceased was assaulted in front of his office at New Bombay, Vashi at about 8.15 a.m. on 16 February 2013. He was taken to hospital by his staff members. The cause of death is stated to be firearm injuries and stab wounds.

3. The deceased was taken to hospital by one of his staff members by name Satyendrakumar Pandey. The deceased had occasion to talk before his death with his son Sandeep Kumar Lohariya. Statements were made

by the deceased before Satyendrakumar Pandey and his son which are stated to be dying declaration.

4. Before I go to that part of the offence, it may be stated that one of the assailants was apprehended on the spot and police had reached the spot within a very short time. One of the assailants had allegedly stated after the assault that the deceased was eliminated at the instance of the Applicant and other co-conspirators. The names of all the co-conspirators had been disclosed by the deceased to his son and Satyendrakumar Pandey.

5. The case of the prosecution is mainly based on circumstantial evidence. It is alleged by the prosecution that there was a motive to commit the alleged crime.

6. It is stated that the deceased was an RTI activist. He had made complaints against various builders who were violating building laws. It is the case of prosecution that the Applicant was engaged in building construction and therefore, he was furious over the frequent complaints made by the deceased. It is with this motive that the Applicant and others entered into conspiracy to eliminate the deceased. Pursuant to the said conspiracy, the services of one Mr. Amolik were hired to eliminate the deceased. Amolik is a retired police officer. It is the case of prosecution that Amolik hired the two assailants to kill the deceased.

7. The other piece of evidence against the Applicant is that the deceased had made a dying declaration before his son and before his staff member Satyendrakumar Pandey that he had been assaulted at the instance of the Applicant and his co-conspirators whose names have also been stated by the deceased in his oral statement before Satyendrakumar Pandey and his son.

8. The third circumstance against the Applicant is the contents in the statement of Jerald who was running an auto vehicle repairing shop in the premises belonging to the Applicant. It is stated by Jerald in his statement that the deceased had planned to kill the Applicant and Anurag Garg (wanted accused). It is further stated that the Applicant and others had decided to eliminate the deceased because deceased himself had planned to kill the Applicant and his friend Anurag Garg. This witness has further stated in his statement that Amolik, retired police officer had one day come to his garage and he had a bag full of currency notes. The enquiry made by the witness revealed that Amolik had received the money in consideration of killing of the deceased.

9. Learned counsel Mr. Gawankar has submitted that these three pieces of evidence and other evidence collected by the prosecution against the Applicant is not sufficient enough to prima facie hold that the Applicant was one of the conspirators to kill the deceased. Mr. Gawankar has submitted that the Applicant and other accused who were stated to be co-conspirators had been meeting frequently as they were friends and that the record collected by the police to show their frequent meetings on the date of incident and earlier thereto does not in any manner link them with the present crime. Mr. Gawankar has also submitted that the statement made by the deceased to Satyendrakumar Pandey and his son also cannot be accepted. It is brought to my notice that the statement of these two witnesses were recorded after unreasonable delay and that the statements could be manipulated. Mr. Gawankar has submitted that even if it is accepted to be true and correct at this stage that such a statement was made by the deceased to Satyendrakumar Pandey and his son, it could hardly be termed as dying declaration of the deceased.

10. As far as the statement of Amolik made to the witness Jerald in respect of bundle of currency notes is concerned, Mr. Gawankar has submitted that it is very hard to accept that a retired police officer will

commit such a foolish act of showing money to the witness and then making a confession.

11. Learned Additional Public Prosecutor Ms. Kantharia has submitted that since the case is mainly based on circumstantial evidence, the prosecution will have to establish all the links in the chain to complete the chain. It is submitted by Ms. Kantharia that the statement made by the deceased was a dying declaration and it directly connects the Applicant with the alleged crime. Ms. Kantharia has submitted that if a retired police officer can involve himself in a crime like murder, he can do anything for which any explanation at this stage is not necessary to expect.

12. After hearing both the sides, the prime question which may arise is as to whether there was a motive to commit the crime. After having gone through the statements of the witnesses, it appears that there was a business rivalry and there could be a motive to commit the crime. Motive, it may be stated, is not integral part of the offence of murder. However, in a case of circumstantial evidence motive assumes a great importance. In the present case also the motive will have to be taken into consideration.

13. As far as the statement of the deceased is concerned, no doubt the Applicant was not assailant himself and therefore, the statement made by the deceased could not have named the Applicant as one of the assailants. Whether the said statement amounts to a dying declaration or not will have to be examined on the basis of provisions of Section 32 of the Evidence Act. Section 32 of the Evidence Act makes the statements of persons who are dead or cannot be found relevant under certain circumstances. The dying declaration is covered by Section 32(1) of the Evidence Act. Section 32(1) of the Evidence Act reads as under :

“When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.”

14. No doubt in the present case, the cause of death of the deceased will be one of the points to be determined by the Trial Court. No doubt the deceased had not made any statement as to cause of his death. But he has made a statement as to the circumstances of the transaction which resulted into his death. Therefore, in my considered opinion, the statement made by the deceased, prima facie, appears to be a dying declaration and cannot be rejected at this stage.

15. The next piece of evidence against the Applicant is the statement made by Amolik to the witness Jerald. The witness Jerald had stated in his statement that Amolik had mentioned to him that the deceased had planned to kill the Applicant and his friend Anurag Garg. The witness Jerald had further stated in his statement that Amolik had brought a bundle of currency notes in his garage and had mentioned to Jerald that the money was psif by Bijlani in consideration of causing of death of the deceased. Learned counsel Mr. Gawankar has submitted that the witness has mentioned the name of Bijlani only and not the Applicant Suresh Bijlani. It was pointed out that there are two Bijlanis in the present case, Mahesh Bijlani and Suresh Bijlani. It was further pointed out that the message was given to Mahesh Bijlani that the work had been done and therefore in all probability, reference could be to Mahesh Bijlani and not to the Applicant Suresh Bijlani. In my opinion, at this stage hair split is not possible as the names of two Bijlanis were involved. It is not possible to say at this stage that it was not Suresh Bijlani.

16. I have carefully examined the relevant portion of statement of witness Jerald and I have come to the conclusion that it virtually amounts to a confession. The confession mentions the name of the Applicant/ Bijlani. Therefore the confession made by the accused Amolik to Jerald is an extra-judicial confession. As far as the Applicant is concerned, it is the confession of co-accused which can be used against the Applicant. The confession of the co-accused in ordinary course is not to be relied upon unless there is

supporting evidence in the nature of corroboration. In the present case, there are statements of many witnesses which indicate that the Applicant and other co-conspirators had been meeting frequently before the commission of crime and they had a meeting in the office of Suresh Bijlani even after the commission of the crime. The statements of the witnesses and the call data record could be a supportive evidence to corroborate other circumstances which are sought to be proved against the Applicant.

17. The fourth circumstance against the Applicant is that he made himself scarce immediately after the incident and went to Madhya Pradesh High Court to seek anticipatory bail which order was later on set aside by the Hon'ble Supreme Court. Abscondance is normally not a piece of evidence. But it is well-known that in the case of circumstantial evidence abscondance of the accused immediately after the incident is one of the strong circumstances to be taken into consideration. Considering the circumstances which are sought to be proved against the Applicant, particularly the confession made by the co-accused supported by other evidence, I am of the considered opinion that no case is made out for bail.

18. In addition to what has been stated by me herein above, what can further be stated is that the son of the deceased is also seriously apprehending danger to his life. Police officers have been approached for grant of adequate security to son of the deceased. I am told that the son of the deceased has been provided with additional security.

19. As such, on merits the Applicant does not have a case for bail and additionally there is danger of tampering with evidence if the Applicant is released on bail. For all these reasons, I am not inclined to grant bail to the Applicant. The Bail Application stands rejected.

(M. L. Tahaliyani, J.)