

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
CRIMINAL APPLICATION NO.6447 OF 2014 IN  
CRIMINAL APPEAL NO.717 OF 2014

Shaikh Raju Gulab @ Raju Jahagirdar Applicant

Versus

The State of Maharashtra Respondent

Mr.R.N.Dhorde, Senior Counsel i/by Shri H.D.Deshmukh,  
advocate for the applicant.  
Mrs.V.A.Shinde, A.P.P. for the Respondent-State.

**CORAM : R.M.BORDE &  
P.R.BORA, JJ.**

**DATE : 29<sup>th</sup> January, 2015**

**PER COURT:**

1 Vide the present application, the applicant is seeking his enlargement on bail.

2 The applicant has been convicted by the Additional Sessions Judge, Aurangabad, in Sessions Case No.376 of 2011 decided on 10.10.2014. He has been held guilty for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code as well as under Section 120B of the Indian Penal Code and for both the offences, has been sentenced to suffer Life Imprisonment and to pay fine amount of Rs.5000/- each.

3 Total seven accused were charge sheeted in the aforesaid Sessions Trial out of which, accused nos.1 to 6 have been sentenced with Life Imprisonment for the offences punishable

under Section 302 read with Section 149 of the I.P.C. as well as under Section 120B of the I.P.C.

4           The alleged incident had occurred on 18.05.2011 at around 8 pm. We need not to elaborately state about the alleged incident, suffice it to say that while entering into Aurangabad city by Car, deceased Anna Lashkare was allegedly shot dead by the accused persons. Immediately thereafter, wife of the deceased lodged First Information Report at Chaoni Police Station, Aurangabad, and investigation was set in motion. A mobile phone was found lying on the spot of occurrence which was handed over by the wife of the deceased to the police. It was subsequently revealed that the said mobile was belonging to accused no.2. During the course of investigation, all the accused came to be arrested and incriminating articles were stated to be seized from them. The country revolver, by which bullets were allegedly fired on the person of deceased, was also seized at the instance of some other accused and after completion of investigation, charge sheet came to be filed.

5           So far as present applicant is concerned, he has been charged for having hatched conspiracy to eliminate deceased Anna Lashkare. It is the case against present applicant that he masterminded the entire plot alongwith the other accused hatched the conspiracy to eliminate deceased Anna Lashkare and left for Ajmer so as to create a scene that he was not at all present on the spot of occurrence when the alleged incident occurred, but, in fact, he was monitoring the things and according to his instructions, other accused persons had acted for giving effect to the said

conspiracy which ultimately resulted in causing murder of Anna Lashkare.

6           Shri R.N.Dhorde, learned Senior Counsel appearing for the applicant submitted that the conviction awarded to the present applicant under Section 302 read with Section 149 of the I.P.C. is apparently untenable. He further argued that even for the offence of conspiracy, the conviction awarded is on the basis of very weak evidence. Learned Senior Counsel took us through the evidence, relying on which, learned Additional Sessions Judge has held the applicant guilty for the aforesaid offences, more particularly of P.W.15 Sachin Pardeshi, P.W.16 Mohan Kusalkar and P.W.18 Raosaheb Lahire. Learned Senior Counsel further submitted that insofar as the fact that applicant was not present on the spot of occurrence and was at Ajmar at the relevant time, is not disputed by the prosecution. The evidence, which is brought on record, is telephonic conversations allegedly taken place between the applicant and the other accused in the relevant period i.e. post and prior occurrence of the alleged incident. Learned Senior Counsel further pointed out that emphasis of the prosecution was on the evidence of two witnesses i.e. P.W.15 Sachin Pardeshi and P.W.16 Mohan Kusalkar. Learned Senior Counsel, taking us through the evidence of both these witnesses, submitted that considering overall evidence of these witnesses, it appears that it falls short for proving the offence punishable under Section 120B of the Indian Penal Code against the present applicant. Learned Senior Counsel pointed out that several improbabilities are there in the evidence of these two witnesses. Learned Senior Counsel further pointed out that there are material omissions and contradictions which have

been brought on record in the cross examination of both these witnesses. Learned Senior Counsel further submitted that it appears improbable that P.W.16 Mohan, who is admittedly a very close relative of deceased Anna Lashkare, even after coming to know that a plot has been hatched to eliminate Anna Lashkare, will remain silent and will not communicate this fact even to Anna Lashkare or to his family members or to the police.

7 In respect of evidence of PW 15 - Sachin Pardeshi, learned Senior Counsel, pointing out to the topography of the place where from the said witness is alleged to have heard conversations amongst the accused, submitted that it does not appear that anything could have been heard by P.W.15- Sachin Pardeshi. Learned Senior Counsel submitted that both these witnesses, apparently, appears to have been planted so as to bring some evidence in respect of the conspiracy. Referring to above aspects and taking us through the judgment and observations made by the learned Additional Sessions Judge, learned Senior Counsel submitted that no such evidence has come on record so as to hold the applicant guilty for the offence punishable under Section 302 read with Section 149 of the I.P.C. as well as for offence punishable under Section 120B of the I.P.C.

8 Opposing the submissions made by the learned Senior Counsel, Smt.Shinde, learned A.P.P., vehemently submitted that ample evidence has been brought on record by the prosecution to prove the conspiracy. Learned A.P.P. further submitted that the conversations, which had taken place amongst the accused persons and which have been duly proved by bringing all relevant

evidence on record, are sufficient to show that all the accused were in contact with each other prior to occurrence of the incident as well as after occurrence of alleged incident. In such circumstances, according to learned A.P.P., the only inference, that can be drawn, leads towards guilt of the accused. Learned A.P.P. further submitted that P.W.15 and P.W.16 are the believable witnesses and even in the cross examination of these two witnesses, nothing has been brought on record by the defence to shatter their evidence. Learned A.P.P. further submitted that out of fear, both these witnesses might not have disclosed the information to any other person, but the fact that such information was received to them has been corroborated by certain other evidence brought on record. The learned A.P.P. submitted that from the evidence brought on record, it has been sufficiently proved that it was accused no.1, who has hatched the conspiracy and who has masterminded the plot. Learned A.P.P. further submitted that the prosecution has also proved the motive of the accused behind committing the murder of deceased Anna Lashkare by bringing on record that there was enmity between deceased Anna Lashkare and accused no.1 as both were belonging to rival political parties and contested elections against each other. Learned A.P.P. brought to our notice that for Zilla Parishad elections, present applicant was an aspiring candidate and he was having every fear that if Anna Lashkare contests the election against him, he may not win that election. Learned A.P.P. submits that, therefore, he hatched the conspiracy which resulted in the murder of Anna Lashkare. Learned A.P.P. further submitted that though attempts were made by the applicant to secure bail even from the High Court, it was not granted and, therefore, after having

convicted, there is no reason and no such case is made out by the applicant to enlarge him on bail.

9 After having considered the submissions made by both learned Counsel and on perusal of the evidence and the judgment delivered by the Additional Sessions Judge, apparently it appears to us that conviction awarded by the learned Additional Sessions Judge under Section 302 read with Section 149 of the I.P.C., may not sustain, for the reason that the word 'assembly' implies several persons gathering together 'in one place' with a common purpose or object. Here, admittedly the prosecution has come out with the case that the applicant was at Ajmer, though it may be the further case that he was monitoring the things from Ajmer. However, we refrain ourselves from making any more discussion on this issue at this stage.

10 P.W.15 Sachin Pardeshi claims himself to be owner of a Cruiser Jeep which, as stated by him, he runs for carrying passengers. In his evidence, he has stated that, on 17.05.2011, he had been to Yashraj Hotel, which is stated to be owned by the present applicant. P.W.15 has further stated that then he had gone to the washroom which is situated, as stated by him, at the backside of hotel Yashraj and through the window, he heard talk between Munna Jahagirdar, Munir Pathan and two others. He has further deposed that the said four persons were talking, "राजूभाईने जे सांगितले आहे तेवढे काम व्यवस्थित करायचे आहे". He further deposed that he also heard the discussion between the said persons to keep watch on Anna Lashkare. He has reproduced the words, which he allegedly heard, "आपल्याला त्याचा गेम करायचा आहे".

11 P.W.16 Mohan Bapu Kusalkar runs a canteen on Newasa Phata road. As deposed by him, office of Raju Jahagirdar i.e. present applicant is near to his canteen and he used to provide tea in the office of applicant. He has further deposed that on 16.05.2011 also, he had been to the office of the present applicant to serve the tea and at that time, he heard some discussion between the applicant and some others in respect of the intended plan to commit murder of Anna Lashkare. The said witness has further deposed that he had also heard the present applicant telling that he will go to Ajmer and behind his back, the other conspirators should finish Anna Lashkare. According to the prosecution, the evidence of both the aforesaid witnesses is quite enough to prove the conspiracy which was hatched amongst the accused persons for elimination of deceased Anna Lashkare.

12 We are, however, not convinced with the argument so advanced by the learned A.P.P. The evidence of P.W.15 and P.W.16 does not appear us to be dependable for plural reasons. As has deposed by P.W.15, he came to know about the alleged conspiracy on 17.05.2011, whereas, according to the version of P.W.16, he came to know about the same one day earlier i.e. on 16.05.2011. However, none of these witnesses had informed about the alleged conspiracy to deceased Anna Lashkare or any of his family member or to the police. As deposed by P.W.15, he came to know about the murder of Anna Lashkare on 19.05.2011 from the news item. However, even thereafter, P.W.15 did not make any attempt to unveil the information with him about hatching of conspiracy by the accused persons in respect of murder of deceased Anna

Lashkare. Same is in respect of P.W.16 also. Though he happens to be a close relative of deceased Anna Lashkare, he also did not inform Anna Lashkare about the criminal conspiracy being hatched by the present applicant and other accused. P.W.16 also did not alert any of the family members of deceased Anna Lashkare nor he reported the matter to the police. As has deposed by him, he disclosed about the same only to one P.W.18 Raosaheb Lahire. Such conduct of both the witnesses appears quite improbable and render their testimony in the shadow of doubt. P.W.16 had also not disclosed the said fact to anyone before his statement was recorded by the police on 25.05.2011. We cannot believe that a close relative of a person even after having come to know that a conspiracy is being hatched for elimination of the said person, will remain silent and would not even attempt to communicate the said fact in any manner whatsoever to the deceased or any of his family members, if not to the police. Admittedly, none of these witnesses had, at his own, approached the police for giving his statement. From the record, it is difficult to gather as to through what source the police could reach to record the statements of P.W.15 Sachin and P.W.16 Mohan.

13            Secondly, though both these witnesses have deposed that they had heard the accused persons deciding a plan for committing murder of Anna Lashkare, there are reasonable doubts whether anything could have been really heard by these witnesses. P.W.15 says that he heard the talk between the accused persons through the window when he had been to a washroom at the rear side of hotel Yashraj. In the cross examination, said witness has admitted that the washroom is not at the rear side of hotel Yashraj,

but is at the front side. Even if it is accepted that whether the washroom was at the rear side or front side is a minor contradiction, doubt remains that whether it was possible for him to hear something if at all any discussion was going on in between the accused persons in hotel Yashraj. As alike, P.W.16 Mohan is stated to have heard the talk between the accused persons by standing outside the office of applicant Raju. In his cross examination, it has come on record that one other accused in the present matter had in the meanwhile entered into the office of applicant Raju when he was standing outside of his office hearing the talk between the applicant and other accused persons. It cannot be believed that even thereafter P.W.16 could have waited there hearing the talk going on inside the office of applicant Raju. Moreover, it also cannot be believed that the persons hatching criminal conspiracy to commit murder of somebody would talk in such a loud voice that the persons standing at the distance of 20/25 feet would overhear it. As such, the evidence of P.W.15 and P.W.16 that they overheard the conversation amongst accused persons making the plan to commit murder of deceased Anna Lashkare, is primarily found improbable and unbelievable. It does not appeal to the logic also.

14           The evidence in respect of conversation occurred between the accused persons through their respective mobiles has also been much relied upon by the learned Additional Sessions Judge. However, after having scrutinized the evidence in that regard, we have doubt as to what extent the said evidence can be relied upon for holding the present applicant guilty for the serious offence of criminal conspiracy. What has come on record is the

fact that the accused persons have indulged in conversation with each other during the relevant period i.e. prior to occurrence of the alleged incident and also after occurrence of the said incident. The learned A.P.P. attempted to submit that P.W.12 Riyazkhan Pathan, who was accompanying the present applicant while on tour to Ajmer, has also deposed that, whenever the applicant used to receive any call, he used to go at some distance and then used to talk. It was the contention of learned A.P.P. that such conduct of the applicant suggests that he was having some such talk at the relevant time from his mobile which he could not wish that be heard by the persons accompanying him, including P.W.12 Riyazkhan. However, it does not appeal to us that in the absence of any further evidence on record, merely because the accused were talking to each other in the relevant period, can be the evidence so as to draw an inference of conspiracy against the present applicant. Admittedly, one of the accused is the real brother of the applicant and others also closely related to each other. In such circumstances, even if it is accepted that they had talk with each other during the relevant period, it is difficult to draw an inference as has been drawn by the learned Additional Sessions Judge.

15           It is further revealed that the Additional Sessions Judge has also relied upon the evidence of P.W.11 Mahesh Pandure and P.W.13 Nitin Nirpagar, who have deposed about the political rivalry between the applicant and deceased Anna Lashkare. According to learned A.P.P., by bringing on record the evidence of aforesaid witnesses, the prosecution has successfully proved the motive of the accused behind commission of the crime. However,

such submissions have also not impressed us. The rivalry between the persons is a double edged weapon. It can be used by the accused also in submitting that since there was a political rivalry, they have been falsely implicated in commission of the alleged crime. It would be hazardous to infer a charge of criminal conspiracy against the applicant merely on the ground of political rivalry between him and deceased Anna Lashkare.

16           We are conscious that the direct evidence cannot be expected to prove the conspiracy. Yet the material, which is of no consequence at all, also cannot go to prove a conspiracy. The offence of criminal conspiracy cannot be said to be established on mere suspicion, surmises or inferences not supported by some dependable and weighty evidence. In the instant matter, it *prima facie* appears to us that the evidence relying upon which the learned Additional Sessions Judge has held the present applicant guilty for the offence of conspiracy, was insufficient and also undependable.

17           For the reasons stated above, we are inclined to allow the present application and to release the present applicant on bail, of course, by imposing necessary restrictions on him.

18           Hence, the following order:

(1)           Criminal Application is allowed.

(2)           The applicant be released on furnishing personal bond in the amount of Rs.1,00,000/- (Rs.One

lakh) and on furnishing a solvent surety/sureties in the like amount, before the trial Court.

(3) The applicant shall not enter into the jurisdiction of Newasa taluka till decision of the appeal.

(4) The applicant shall submit his residential address at which he will reside in the meanwhile period to the nearest Police Station and shall mark his presence at the said Police Station once in a week and shall inform the said Police Station well in advance whenever he will leave the jurisdiction of the said Police Station.

18 The application stands disposed of accordingly.

**P.R.BORA**  
**JUDGE**

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**R.M.BORDE**  
**JUDGE**