

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5437 OF 2016

Ganesh Vishwas Sapkale .. Applicant
Age. 32 years, Occ. Private Business,
R/o. Prajapat Nagar, Jalgaon.

Versus

The State of Maharashtra .. Respondent

Mr. Joydeep Chatterji, Advocate for the applicant.
Mr. A. S. Shinde, APP for respondent/State.

CORAM : A.M. BADAR, J.

DATED : 07.10.2016

P.C. :-

1. The applicant/accused in Crime No.17 of 2016 registered with Shani Peth Police Station, Dist. Jalgaon for the offences punishable under sections 302, 120-B, 323, 324, 147, 148, 149, 504, 506 of the Indian Penal Code, by this application, is seeking his release on bail.

2. Heard learned Counsel appearing for the accused. By pointing out my attention to statements of three witnesses Sagar Choudhari, Sandip Patil and Rajesh Mishra, learned Counsel argued that evidence against present applicant is exactly similar to evidence against one person, named, Kailas Appa Sonawane in these

statements. Then by pointing out charge-sheet, learned Counsel argued that though Kailas Sonawane is arrayed as accused No.2, the Investigating Officer has made an endorsement that he is not charge-sheeted as an accused as there is no sufficient evidence against him. With this, learned Counsel argued that the applicant and said Kailas Sonawane are sailing in the same boat as evidence against both of them is same, but Kailas is not charge-sheeted. Learned Counsel further argued that even if statement of all these three witnesses are considered, then also no offence except one punishable under section 506 of the Indian Penal Code is seem to have been committed.

3. Learned A.P.P. relying on these statements, opposed the application by contending that Sagar Choudhari – brother of the deceased, was called at Jalgaon prison by present applicant and at that place, Sagar was threatened to withdraw the prosecution against the applicant. Learned A.P.P. argued that present applicant had informed Sagar that if he does not follow instructions, then present applicant as well as Kailas Sonawane have already hatched conspiracy and planned the things to eliminate Sagar.

4. I have also heard learned Counsel appearing for

the informant. By drawing my attention to chronology of events, which took place prior to death of Kishor Choudhari, learned Counsel argued that it was on 08.03.2016, Sagar Choudhari was called in the jail at Jalgaon for a meeting with the present applicant. In that meeting, Sagar was threatened for withdrawal of prosecution with the information that on failure to adhere to the instructions, he will be eliminated under the plan hatched with Kailas Appa Sonawane. Learned Counsel then pointed out that on 09.03.2016, present applicant called Sandip Patil for a meeting at the premises of the District and Sessions Court, Jalgaon. At that place, it was ascertained whether Sagar met Kailas Sonawane. On fateful date i.e. on 10.03.2016 brother of Sagar – Kishor Motilal Choudhari was murdered by using icepick as well as knife as the main weapons of the crime by all accused persons who are related to the present applicant. With this, learned Counsel argued that present applicant cannot be released on bail. It is further argued that the applicant has criminal antecedents and he had committed murder of his driver in past. It is further argued that there are constant threats of elimination from the present applicant to the informant and his family members.

5. I have carefully considered the rival

submissions and gone through the charge-sheet. It is not in dispute that on the date of commission of murder of Kishor Choudhari i.e. on 10.03.2016, present applicant was an under-trial prisoner in Sessions Case No.15 of 2015. It is also not in dispute that by the date of commission of murder of Kishor i.e. 10.03.2016, evidence of Sagar Choudhari - brother of the deceased was already recorded in that Sessions case. In this factual backdrop one will have to keep in mind that the charge against present applicant is of conspiracy to eliminate the deceased. According to the prosecution case, the target was Sagar Choudhari but as his brother Kishor Choudhari was found on the spot, he was killed in brutal manner by assaulting by means of icepick as well as knife.

6. When two or more persons caused to do or caused to be done an illegal act or an act which is not illegal by illegal means then such agreement is defined as criminal conspiracy. The essence of criminal conspiracy is criminal combination. Once criminal combination is formed, offence of criminal conspiracy is committed. In this backdrop let us consider evidence against present applicant, who was inmate of Jalgaon district prison on the date of commission of crime of murder of Kishor Choudhari.

7. Statement of Sagar - brother of the deceased shows that on 08.03.2016, he along with Rajesh Mishra met present applicant in Jalgaon district prison. There, the applicant insisted Sagar to withdraw the prosecution of Sessions Case No.15 of 2015, in which he was an accused. Sagar stated that he told the applicant that his evidence (Sagar's evidence) is already recorded and nothing can be done. The statement of Sagar shows that upon that, applicant Ganesh Sapkale told him that he should meet Kailas Appa (Kailas Sonawane) and Kailas will tell further course of action. It is further alleged that the present applicant informed Sagar Choudhari that if his instructions are not followed, then he (present applicant) and Kailas Appa (Kailash Sonawane) have already planned how to eliminate Sagar Choudhari. It is thus clear that the present applicant had directed Sagar to meet Kailas Appa Sonawane for deciding further course of action to be followed in the Sessions Case with threat that on failure, he and Kailas had hatched a plan to eliminate him. Similar is the statement of Rajesh Mishra. Apart from this, Sandip Patil, who is third witness has on the point of conspiracy has stated to police that on 09.03.2016 he met present applicant in the premises of Sessions Case at Jalgaon. In that meeting present applicant enquired from Sandip as to whether Sagar Choudhari met Kailas @ Appa Sonawane as per the

instructions. Sandip Patil stated that, then present applicant told him that Sagar should immediately contact Kailas Appa Sonawane or else he will not spare any family member of Sagar Choudhari. This is an evidence against present applicant in the charge of conspiracy to kill Sagar Choudhari in which ultimately his brother Kishor was done to death.

8. If statement of these three witnesses are scrutinized, it is apparent that the present applicant and Kailas Sonawane according to the prosecution case had hatched a plan and indulged in conspiracy to kill a member of prosecuting party. If that is so, then the present applicant and Kailas Sonawane were equally liable for the charge. However, charge-sheet shows that Kailas Sonawane is not made accused in this crime. Rather by disclosing his name in the charge-sheet the investigator has stated that there is insufficient evidence available against Kailas Sonawane and therefore in future the investigator may file charge-sheet against him after further investigation.

9. Then, one more aspect which strikes the mind is if there was conspiracy to eliminate a member of prosecuting party, because one of its member i.e. Sagar Choudhari is a witness in the murder case against present

applicant, then whether the crime would be committed in broad day light in which almost all family members of the applicant would be involved. This question is for answer in the trial.

10. So far as criminal antecedents are concerned, it is seen that the applicant is already acquitted in the crime registered against him.

11. The apprehension of the informant can be taken care of by imposing appropriate condition against the applicant. He can be directed to stay away from Jalgaon district during pendency of the Trial.

12. Considering the nature of evidence available against present applicant, his pre-trial detention is not warranted. Therefore, the following order :-

O R D E R

i) The application is allowed.

ii) Applicant/accused - Ganesh Vishwas Sapkale in Crime No.17 of 2016, registered with Shani Peth Police Station, Jalgaon for the offences punishable under sections 302, 120-B, 323, 324,

147, 148, 149, 504, 506 of the Indian Penal Code be released on bail on executing P.R.Bond of Rs. 50,000/-[Rupees Fifty Thousand] and on furnishing surety in the like amount.

(iii)As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) During the pendency of the trial of the crime in question, the applicant shall not enter the territorial limits of Jalgaon district, except for attending dates of hearing fixed for the trial.

[A.M. BADAR, J.]