

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1221 OF 2016

Pratim Mukurjea alias Peter MukerjeaApplicant

V/s.

Central Bureau of InvestigationRespondent

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Mr. A.P. Ghag, Advocate for the applicant.

Mr. Sandesh Patil, Advocate for respondent no.1, CBI.

Ms. R.M. Gadhvi, APP for State.

CORAM :- N. W. SAMBRE, J.

DATED :- 1ST DECEMBER, 2016.

P.C. :-

1). The matter has been placed on the board for speaking to minutes of the order dated 16th November, 2016. Mr. Patil, learned Counsel appearing for respondent no.1, points out the following typographical errors :-

1). Appearance of Mr. Amit C. Singh to be read as “Mr. Anil C.

Singh”.

2). In para-4, in the first line, “Indrayani” to be read as “Indrani”.
In the same para, in the second line, “Sanjay” to be read as
“Sanjeev”.

3). In para-5, in the first line “Sanjay” to be read as “Sanjeev”
and in the fourth line “Indrayani” to be read as “Indrani”. In
the same para-5, in the fourth line “Anita” be read as
“Shabnam” and in the sixth line, “Robin” be treated as
“Rabin”.

4). In para-7, in the second line “Sanjay” to be read as “Sanjeev”.

2). The following corrections be carried out and the order be read
accordingly.

(N.W. SAMBRE, J)

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BAIL APPLICATION NO. 1221 OF 2016

Pratim Mukerjea alias Peter
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.....Applicant

V/s.

Central Bureau of Investigation
and anr.

.....Respondents

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Mr. Aabad Ponda, a/w. Mr. Ranbir Singh i/by. Mr. Amit Ghag,
Advocate for the applicant.

Mr. **Anil** C. Singh, Additional Solicitor General of India a/w. Mr.
Sandesh Patil, Mr. Bharat Badami and Ms. Indrayani Deshmukh,
for respondent no.1/CBI

Ms. S.S. Kaushik, APP for respondent no.2, State.

CORAM :- N.W. SAMBRE, J.

DATED :- 16th NOVEMBER, 2016.

P.C. :-

1). The applicant herein is seeking regular bail in Special
CBI Case No. 9 of 2016 in Crime No. 406 of 2015 (CBI RC-
12(S)/2015/SC-I/New Delhi) registered for offences punishable

under Sections 364, 328, 302, 201, 202, 203, 420, 461, 471 read with Section 120B Indian Penal Code and Sections 3 and 35 of the Indian Arms Act.

2). It is alleged by the prosecution that, the applicant was married to accused no.1, Indrani in November, 2002.

3). Indrani while studying at Shillong was in live-in relationship with Siddharth Das out of which relation, a daughter, Sheena was born on 11th February, 1987.

4). Accused no.1, **Indrani** thereafter got married with a businessman by name, **Sanjeev** Khanna at Kolkatta on March, 29, 1993 and after her divorce she got married to the present applicant, as stated hereinabove.

5). Out of the marriage of Indrani with **Sanjeev** Khanna, daughter, Vidhie was born who was later on adopted by the applicant. The applicant herein, prior to his marriage with **Indrani**, was earlier married to one, **Shabnam** Singh and out of the said wedlock the applicant was blessed with two sons, Rahul and **Rabin**.

6). Rahul, son of the applicant fell in love with Sheena, daughter of Indrani which relationship was not acceptable to the applicant and his wife, Indrani who claimed to have hatched a conspiracy to murder Sheena i.e. her own daughter.

7). Accordingly, Indrani with the help of accused no.2, **Sanjeev** Khanna, accused no.3, Shyamvar Pinturam Rai abducted Sheena. On 24th April, 2012 it is claimed that initially sedatives

were administered to Sheena and later she was strangled to death. Her dead body was disposed off on April 25, 2012 at Gagode, Khind, Khopoli, Pen Road, Raigad by burning the same.

8). In this background, it is also claimed by the prosecution that, applicant is equally involved in a conspiracy, as at the relevant time, the applicant was in regular touch with accused no.1, Indrani though he was out of the country. It is also claimed that, the relationship of Sheena with Rahul, son of the applicant since was not acceptable to the applicant, there was common intention and motive to murder Sheena which was supported by the present applicant. After the investigation, the chargesheet in the matter is filed.

9). In the above referred background of the prosecution case, the learned Counsel for the applicant, Mr. Ponda argued at length and has taken me through the statements of the witnesses and the chargesheet including that of CDR-Report, SMS details so as to urge that the applicant herein for all the time was misinformed/misguided by accused no.1, Indrani that his stepdaughter, Sheena has left for U.S. According to Mr. Ponda, the material as is placed on record including that of copies of CDR-Report, the details of SMS takes to the only conclusion that the applicant was not aware about the whereabouts of Sheena, he having believed that she is in U.S. as was informed to him. In addition, from the statement of the witnesses and other material Mr. Ponda would urge that, though initially there was some

resistance from the side of the applicant in the matter of relationship between Sheena and his son, Rahul, the applicant subsequently supported Rahul on the issue of relationship and his intention to marry Sheena, as according to him, if both were compatible to each other, he had no objection to their relationship. In addition, he would submit that the applicant has blessed, both Rahul with Sheena after their engagement. In addition, Mr. Ponda would urge that the routine calls between the applicant and accused no.1, Indrani when the applicant was out of the country alongwith daughter, Vidhi to spend vacation were just good morning calls and also includes call to enquire about well being of applicant and Vidhi by Indrani. According to him, it can't be inferred from the record that, the applicant has hatched a conspiracy so as to murder his stepdaughter, Sheena. He would then urge that, the necessary ingredients of Section 120B so as to infer the angle of conspiracy are not satisfied. There was no meeting of mind of two or more persons so as to give effect to crime, which requirement is conspicuously absent in the present case.

10). Mr. Ponda would then urge that the material as is placed on record would take to the only conclusion that the present applicant has supported the relationship between Sheena and Rahul. Mr. Ponda would urge that the entire case is based on circumstantial evidence and upon plain reading of the evidence, there is no completion of the chain of evidence which pinpoints prima-facie involvement of the applicant particularly in absence of

motivation.

11). While opposing the claim, Mr. Singh, the learned Additional Solicitor General of India for the respondent, while taking me through the documents placed on record, has invited my attention to an issue as to whether the version of the applicant that he was misguided about the whereabouts of Sheena can be believable ? According to him, the applicant was very much aware about the relationship between Sheena and Rahul which, even if presumed to be supported by the applicant, it was very much expected of the applicant to know the whereabouts of Sheena. More so, when he supported the relationship between Rahul and Sheena. He would add that the applicant without verifying the physical presence of his stepdaughter who was to marry his son, has blindly believed his wife on the issue of Sheena had gone out of the country, as the relationship between Rahul and Sheena was broken. In addition to above, so as to substantiate his contention that there was meeting of two minds i.e. accused no.1 and the present applicant and accused no.4 who has hatched conspiracy and as such applicant has abated the murderer of Sheena, has taken me through CDRs, the details of the mobile calls between Indrani and the present applicant, other messages including the one forwarded from the mobile phone of Rahul so as to submit that the relationship between the applicant and Rahul was no so cordial. The said mobile phone call details are pressed into service for the purpose of inferring criminal conspiracy. He has also invited my

attention to the fact that, other witnesses viz. Pritul Sanghavi, accused no.2-Shyamvar in his statement recorded under Section 164 Criminal Procedure Code and thereafter statement recorded under Section 161 Criminal Procedure Code has stated that accused no.1 has called the present applicant after the murder of Sheena was executed. According to him, there is substantial material on record to prima-facie infer that the applicant is involved in the crime in question. He would submit that, there is strong material in the form of evidence available on record. As such the application needs to be rejected.

12). At the outset, it is required to be noted that the statement of co-accused, Shyamvar recorded under Section 164 and Section 161 of the Criminal Procedure Code raises finger towards the applicant as regards his involvement. So as to substantiate the same, reference can be drawn from the fact that even though the applicant was at the relevant time out of country still he was in regular touch with the main accused, Indrani everyday on phone and SMS were also exchanged. The statement of adopted daughter Vidhi also speaks of disapproval of relationship between Sheena and Rahul by the applicant. The statement of other witnesses namely, Pritul Singhvi, domestic help-Waghmare also pinpoints finger of involvement of the applicant to the crime in question.

13). The submission of Mr. Ponda that, applicant was misled by the main accused, Indrani as regards the whereabouts of daughter, Sheena and he was made to believe that Sheena is very

much alive, not in touch with Rahul son of the applicant and is residing out of the country is completely unbelievable. Even though the applicant is a stepfather of deceased, Sheena and he claims to have supported the relationship of his son, Rahul with Sheena, in such an eventuality, the least that was expected of is, applicant being the stepfather of Sheena and father of Rahul should know her whereabouts. Infact it could be gathered from the record that, his own son, Rahul has insisted for personally meeting, Sheena and that was an occasion for the applicant herein to find out the whereabouts of Sheena as he claimed to have supported their relationship. It is really unbelievable that, a stepfather has no concern for a daughter for almost three years as regards her whereabouts. The burden to prove the same is on the present applicant as the provisions of Section 106 of the Evidence Act prescribes so.

14). The applicant's act of being in touch with Waghmare, the domestic help of Indrani and the message forwarded from mobile of Driver to Rahul on behalf of applicant, has been relied by the defence side, which *prima-facie*, (could be inferred to have not been sent by the present applicant to son, Rahul supporting his relationship), there is enough material in the investigation to *prima-facie* infer that the applicant was also not in support of relationship of Rahul with Sheena. He being in regular touch with Indrani prior to leaving abroad and even after living in foreign country with daughter, Vidhi speaks of the discussion of the applicant with

Indrani including that of the issue of murder unless contrary is proved while recording the evidence.

15). The Courts below, have twice rejected the bail application of the applicant, first on 12th February, 2016 and thereafter by an order dated 23rd May, 2016. Both these orders, in detail discussed about the material available on record for the purpose of dealing with the plea of bail of the applicant and has rejected the same.

16). For the reasons stated hereinabove, in my opinion, no case for bail is made out. The application as such fails. The bail application is rejected.

(N.W. SAMBRE, J)

Note : The order is corrected pursuant to speaking to minutes order dated 1st December, 2016.