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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2414 OF 2016

Jagdishkumar Parbat Baria

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

Mr.Subhash Jha a/w Ms.Rushita Jain i/b Law Global Advocates, for the
Petitioner.

Mr.S.R.Agarkar, A.P.P for the Respondent-State

Ms.P.H.Kantharia, Public Prosecutor, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th OCTOBER, 2016

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 8th June, 2016, passed by learned Sessions Judge, Diu, below Exhibit – 7 in Sessions Case No. 3 of 2015, by which his application seeking discharge from the aforesaid case came to be rejected.

3. Mr.Jha, learned counsel for the petitioner submits that except an alleged strong motive, there is absolutely no evidence qua the petitioner to connect him with the alleged offences. He submits that the petitioner was not in Diu, at the time of the alleged incident dated 9th April, 2014, i.e. when the deceased – Ranjit was assaulted by the co-accused. According to the learned counsel, only on account of an earlier incident, the petitioner has been falsely implicated in the present case. Mr.Jha, submitted that there is no material to show that the petitioner conspired with the co-accused to eliminate Ranjit (deceased). He submitted that merely on suspicion the petitioner cannot be charged for the alleged offences, as there is no evidence in the entire charge-sheet to show the petitioner's complicity in the said crime. He submitted that motive, by itself, is not sufficient to even frame a charge against the petitioner. He relied on the Judgments of the Apex Court in the case of ***State of U.P.,Through Central Bureau of Investigation v/s Dr.Sanjay Singh and Another***¹; ***Yogesh alias Sachin Jagdish Joshi v/s State of Maharashtra***²; and ***State of Karnataka v/s L.Muniswamy and Others***³, in support of his submission. He submitted that in the absence of any other direct evidence, the petitioner ought to be discharged. Learned

1 1994 Supp(2) SCC 707

2 (2008) 10 SCC 394

3 (1977) 2 SCC 699

Counsel for the petitioner has raised a *plea of alibi*. According to the learned counsel, as the petitioner had lost vision of both eyes, he had signed off from the ship. He submitted that the petitioner had left Diu, for Mumbai on 5th April, 2014, as his appointment with Dr.M.R.Morker, was fixed on 7th April, 2014; that on 7th April, 2014, the petitioner visited Bombay Hospital to meet Dr.Morker, who suggested that the petitioner should get spectacles for his eyes; that on the same day the petitioner went to an optical shop at Khar Danda Road, Mumbai, to buy spectacles; that on 9th April, 2014, the petitioner visited the office of his employer NYK Ship Management (India) Private Limited, where he was informed that his American Visa was going to be expire and was asked to get the same renewed; that on the same day, the petitioner visited a photo studio, as photographs were required for renewal of his American visa; and that on 10th April, 2014, as the photographs which were delivered were not proper, the petitioner visited another studio i.e. Vijay Photo Studio, at V.T., Mumbai and got fresh photographs, for submitting the same for renewal of his American visa. Mr.Jha further submitted that with a view to complete the on-line procedure for renewal of the visa, the petitioner visited one cyber cafe at Vaju Kotak Marg, Mumbai and on completion of the procedure, the petitioner visited

Axis Bank, Fort, Mumbai for depositing the necessary visa fees; that the petitioner again visited the said cyber cafe, after depositing the necessary payment in Axis Bank, to complete the formalities and on completion of the procedure, the petitioner got an on-line confirmation from the American Consulate; that on 11th April, 2014, the petitioner again visited his employer's office, to inform them that he had completed the procedure for renewal of his American visa and collected the sponsorship letter addressed by his Company to the American Consulate; that the petitioner submitted his confirmation letter personally to the Visa Application Centre, at Bandra (East), Mumbai; and that the petitioner went to the Visa Application Centre, at Bandra (East), Mumbai, to collect the documents on 17th April, 2014, as he was granted visa. Learned Counsel for the petitioner has relied on all the documents, which are annexed to the petition in support of his submission to show, that the petitioner was not present at Diu, at the time of the alleged incident.

4. Ms.Kantharia, learned Public Prosecutor for the Respondent No.2 - Union Territory of Daman and Diu, opposed the petition. She submitted that the plea of *alibi* raised by the petitioner, cannot be looked

into at this stage and is a matter of trial. She submitted that there is enough material against the petitioner to frame charges under Section 302, 120B, 468, 420, 201 r/w 34 of the Indian Penal Code. According to the learned Public Prosecutor, the deceased father had specifically named the petitioner in the FIR. She submitted that there was a strong motive for the petitioner, to do away with the deceased, as the deceased was having an affair with his niece, even after her marriage. She submitted that infact, one month prior to the incident i.e on 13th March, 2014, the deceased (Ranjit) was assaulted by all the accused, including the petitioner and was threatened not to lodge any police complaint or else he and his brother would be killed and hence no complaint was lodged by the deceased. She submitted that the motorcycle which was used in the commission of the offence belonged to the petitioner. She further submitted that the petitioner was absconding for almost 1 ½ year till he was arrested on 29th July, 2015, after which a supplementary charge-sheet was filed against the petitioner. She submitted that the statements of the father and brother of the deceased, recovery of the motorcycle belonging to the petitioner and evidence of motive, clearly show the petitioner's complicity in the offence. She submitted that the fact, that the petitioner was absconding for almost 1 ½ year, after the incident cannot be ignored.

According to the learned Public Prosecutor, there is sufficient material to proceed against the petitioner, in the said case.

5. Perused the papers. According to the prosecution, the deceased (Ranjit) was having an affair with the petitioner's niece, Heena. The petitioner and co-accused – Jitendra @ Pichki Parbat Baria, are the real maternal uncles of Heena. According to the prosecution, the accused had got Heena married at Sutrapada, however, she continued to be in touch with the deceased (Ranjit) and would call him often to meet her. According to the prosecution, the said fact had come to the knowledge of the accused including the petitioner. It is alleged that sometime on the 2nd and 3rd day of Navratri in 2013, all the accused had assaulted Ranjit, however, the issue was settled between the parties. It appears that thereafter again on 13th March, 2014, Heena had called Ranjit to meet her, at the old house of the accused no.2 - Jitendra. It is alleged that the petitioner and Jitendra learnt about the same, pursuant to which, the deceased (Ranjit) was striped and assaulted by all the accused and was threatened that if he lodged any police complaint, he and his brother would be killed. It is alleged by the complainant i.e. father of the deceased, that thereafter, all the accused

conspired and decided that co-accused – Vinod Jethwa would befriend Ranjit (deceased), pursuant to which, co-accused Vinod, started visiting Ranjit (deceased) frequently and started giving him false promises and temptations. It is alleged that on 9th April, 2014 at about 9.45 hrs, Ranjit (deceased) received a telephone call from co-accused - Vinod. Accordingly, Ranjit (deceased) informed his family that he has received a phone call from Vinod Jethwa and that he was going to meet Vinod at Nagwa and left on his motorcycle. It is alleged that as Ranjit (deceased) did not return back home, in the night, his parents tried to contact him, but he could not be contacted as his number was coming switched off. Accordingly, on 10th April, 2014, Ranjit's parents tried to contact Ranjit and looked for him, however, Ranjit could not be traced, hence, a missing complaint was lodged with the Ghoghla Police Station on 11th April, 2014. Within two hours of lodging the complaint, the police informed Ranjit's parents that a motorcycle was recovered from an abandoned place and so was a dead body. The complainant was called to identify the dead body, who identified the same, as being of his son, Ranjit. According to the prosecution, Ranjit (deceased) had recorded the last call made by co-accused - Vinod and had sent the said clipping to his friend, which was handed over to the police.

The complainant has alleged in the FIR, that all the accused, including the petitioner were responsible for the murder of his son – Ranjit. Thereafter, 3 co-accused were arrested and after investigation, charge-sheet was filed as against them. As the petitioner was absconding for almost 1 ½ year, he was shown as absconding in the charge-sheet and was arrested only thereafter i.e. on 29th July, 2015.

6. Learned Counsel for the petitioner has submitted that the petitioner was not present in Diu, at the time when the alleged incident took place. He relied on several documents in support of the petitioner's *plea of alibi*. It is pertinent to note, that the prosecution has disputed the *plea of alibi* raised by the petitioner. Needless to state, that the said plea, cannot be considered at this stage and is a matter of trial.

7. As far as motive is concerned, *prima facie*, there is a strong motive as against the petitioner, to commit the alleged offence. According to the complainant, in the two earlier incidents, the petitioner was involved and that the petitioner had also assaulted Ranjit (deceased), as the deceased was meeting his niece – Heena, even after her marriage. The complainant's

statement is corroborated by the statements of other witnesses, with regard to the incident of assault by the petitioner and others on 13th March, 2014. There is recovery of a motorcycle belonging to the petitioner, which was used in the commission of the offence. Although, according to the learned counsel for the petitioner, the said vehicle was sold by the petitioner, prior to the incident, but was not transferred on paper, the said fact, cannot be gone into at this stage. The fact remains that the motor cycle was in the petitioner's name at the relevant time. It appears that Ranjit (deceased) was administered aluminum phosphate after making him consume alcohol, as a result of which he fell down and suffered a head injury and succumbed to the same. Apart from the aforesaid, the petitioner was absconding for almost 1 ½ year and was arrested only on 29th July, 2015, pursuant to which supplementary charge-sheet was filed against him.

8. As far as the judgments relied upon by the learned counsel for the petitioner are concerned, the same are clearly distinguishable from the facts of the present case. *Prima facie*, there is sufficient ground to proceed against the petitioner i.e. to frame charge as against the petitioner.

9. Considering the aforesaid, no interference is warranted in the impugned order.

10. The petition is accordingly dismissed and is disposed of as such.

11. It is made clear, that the observations made herein, are prima-facie, for the purpose of deciding this petition and the trial Court shall decide the case on its own merits, uninfluenced by the observations made in this order.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.