

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.400 of 2014

Meghana Mangesh Lanjekar .. Applicant
Versus
The State of Maharashtra & Ors .. Respondents

WITH**CRIMINAL APPLICATION NO.675 of 2014**

Meghana Mangesh Lanjekar .. Applicant
Versus
The State of Maharashtra & Ors .. Respondents

Mr.Sanjay Kulkarni, Advocate for the applicant.

Mr.Prakash Naik, Sr. Advocate i/b Mrs.Vrishali Raje, Advocate for respondent nos. 3 and 4 in Appln No.400/14 and for respondent no.2 in Appln No.675/14.

Mr.Mohammed Umar Kazi for respondent no.2 in Appln No.400/14.

Mr.V.B. Konde Deshmukh, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 7th JANUARY 2016

ORAL ORDER :-

1 These two applications can be conveniently disposed
of by this common order.

2 The applicant in both these applications is the widow of one Mangesh Lanjekar who was murdered on 15th August 2013. On the basis of the First Information Report lodged by Arvind Lanjekar – brother of the deceased, a case in respect of offences punishable under section 341 IPC, 364 IPC, 427 IPC and 109 of the IPC was registered, and investigation commenced. Ravindra Gunjal (respondent no.2 in Cr. Appln No.675/14) Ganesh Gunjal and Sachin Dhotre (respondent no.3 in Cr.Appln No.400/19) were arrested in the early hours of 16th August 2013. Ishwar Gunjal (respondent no.2 in Criminal Application No.400/14) was, however, arrested on 22th October 2013.

3 All the accused applied for bail before the Court of Sessions. The Court of Sessions granted bail to the accused Ishwar Gunjal (respondent no.2 in Criminal Application No.400/14) on 8th January 2014 and to Sachin Dhotre on 7th May 2014. Ganesh Gunjal and Ravindra Gunjal were not granted bail by the Court of Sessions. Ravindra Gunjal (respondent no.2 in Cr.Appln. No.675/14) was, however, released on bail by this Court by an order dated 18th January 2014, primarily by observing that his case was almost on par with Ishwar Gunjal who had been released

on bail by the Court of Sessions. The applicant being aggrieved by the orders granting bail to the respondents, has approached this Court for cancellation of the bail granted to them by making these two applications.

4 I have heard Mr.Sanjay Kulkarni, the learned counsel for the applicant. I have heard Mr.Prakash Naik, learned counsel for the respondent nos.2 and 3 in Appln No.400/14 and for respondent no.2 in Appln No.675/14. I have heard Mr.V.B. Konde Deshmukh, learned APP for the State. With the assistance of the learned counsel, I have glanced through the copy of the charge-sheet that has been supplied by the learned counsel for the applicant.

5 The substance of the prosecution case is that there was professional rivalry and resultant enmity between Mangesh Lanjekar and his brother Arvind Lanjekar on one hand, and Ravindra Gunjal and Ishwar Gunjal on the other hand. On an earlier occasion, Arvind Lanjekar was attacked by Ravindra Gunjal, Ishwar Gunjal and Tushar Gunjal, and a case of offences punishable under section 307 IPC read with section 34 of the IPC and section 25 of the Arms Act, was registered against them in that regard. This case, which was registered in 2008 is still

pending vide Sessions Case No.28/09 in the Sessions Court at Kalyan. In that case, the deceased Mangesh Lanjekar was a witness.

6 The prosecution case is specifically that due to this rivalry, Mangesh Lanjekar was assaulted by Ganesh Gunjal and Sachin Dhotre resulting in his death. This assault is said to have been in pursuance of the conspiracy that was hatched by and between the accused persons.

7 The learned counsel for the applicant contended that while releasing the accused Sachin on bail, the Court of Sessions overlooked certain incriminating material. He also submitted that even this Court committed an error in treating the case of Ravindra on par with that of accused Ishwar. According to him, even the order granting bail to accused Ishwar, as passed by the Court of Sessions, is not in accordance with law. It is also submitted that the enmity between the family of the accused persons and that of the deceased being undisputed, the applicant apprehends danger to the life of other members of her family if the accused are allowed to be at large. The learned counsel for the respondents submitted that the applications for cancellation of bail were not legally tenable. He submitted that there was no

sufficient material against any of the respondents to hold that there was a strong *prima facie* case against them. He also submitted that the accused persons are on bail since quite some time, and that there is no allegation that they have, or any of them has, misused the liberty granted.

8 I have carefully considered the matter.

9 Since Sachin Dhotre is said to be one of the actual assailants, it would be proper to examine the material against him, as found in the charge-sheet. It appears that the incident of assault was witnessed by a number of persons, but none of them has identified Sachin as one of the assailants. He has not been named by any of the persons who have allegedly witnessed the assault. It may be observed that the co-accused Ganesh Gunjal has, however, been named by some of the persons, and has not been released on bail.

10 It appears that a motorcycle bearing no.MH-05-AD-9506 was found on the scene of the offence. The case appears to be that this motorcycle was used to make the vehicle by which the deceased was travelling, stop. It is thereafter that the deceased was pulled outside the car.

11 Mr.Sanjay Kulkarni, learned counsel for the applicant pointed out that there was material to indicate that the said motorcycle had been taken by accused Sachin Dhotre from the house of Smt.Shantabai. He also pointed out that there was material to indicate that the said motorcycle was being used by Babu – son of Shantabai, and his version is similar to that of Shantabai. It is also pointed out that the accused Sachin Dhotre had confessed about having committed the offence in question, and that there was material in the nature of extra judicial confession against him. It is also pointed out that the clothes of Sachin which he was wearing at the time of arrest, were stained with blood. It is submitted that all these factors were not considered by the Addl. Sessions Judge while releasing Sachin on bail. Indeed, from the order passed by the Court of Sessions releasing accused Sachin on bail, it does not appear that these factors were taken into consideration by the learned Judge. It is apparent that the circumstance i.e. that the motorcycle by which the offenders travelled had been obtained by Sachin Dhotre from Shantabai, was not pointed out to the learned Addl. Sessions Judge.

12 Mr.Naik, the learned counsel for the respondents submitted that inspite of the fact that the connection of the motorcycle with the accused Sachin was not taken into consideration while releasing him on bail, the order passed by the learned Addl. Sessions Judge, is nevertheless proper and legal. He submitted that though a number of persons had allegedly witnessed the assault, none of them had identified accused Sachin. Mr.Naik submitted that actually the learned Addl. Sessions Judge proceeded on the basis that two of such persons had identified accused Sachin, but inspite of this proceeded to grant bail to him by observing that the statements of the persons who had identified Sachin, were recorded belatedly.

13 It is conceded before this Court that accused Sachin was placed in the Test Identification Parade, but could not be identified by anyone. The Memorandum of the Test Identification Parade was not filed along with the charge-sheet, and it was in the course of the hearing of the present applications that it was got produced through the Investigating Officer. It was also observed that the Chemical Analyser's report in respect of the clothes of the accused persons that had been seized in the course of

investigation, was also not produced along with the charge-sheet, and the same was also procured during the pendency of the present applications through the Investigating Officer.

14 The Chemical Analyser's report shows that though the group of the blood, the stains of which were found on the clothes of the accused Sachin Dhotre, could not be determined, the blood was human blood.

15 That, Sachin Dhotre was, however, not identified by anyone in the Test Identification Parade, is however, correct.

16 The learned counsel for the applicant, as also the learned counsel for the accused respondent have placed reliance on the observations made by the Superior Courts and the Apex Court while dealing with the question of cancellation of bail, as are found in the reported judgments relied upon by the learned counsel. It is not necessary to reproduce the observations as the principles in that regard are well settled, and no judgments seek to depart from those principles, or to lay down any new principles.

17 It is a fact that certain crucial material against accused Sachin Dhotre was not considered by the learned Addl. Sessions Judge while releasing him on bail. It is also true that certain material which did not exist against him, was believed to be existing by the learned Addl. Sessions Judge, though he discarded it.

18 The question is whether a *prima facie* case to the effect that Sachin Dhotre was indeed one of the assailants, was made out against him.

19 In my opinion, the answer has to be in the affirmative.

20 The fact that the motorcycle which was found on the scene of offence, and which was in all probability used for getting the motor vehicle by which the deceased was travelling stopped, had been obtained by the accused Sachin shortly before the incident, was extremely significant. The fact that there was one more person with the assailant Ganesh Gunjal is also not in dispute. Sachin Dhotre was arrested immediately within few hours from the incident, and there were stains of human blood on his clothes. These factors were sufficient to make out a *prima facie* case against him.

21 As regards the accused Ishwar, admittedly, he was not present in Ambernath when the murder took place. Weighing this fact in his favour, the learned Addl. Sessions Judge released him on bail. He, however, did not release the accused Ravindra on bail by observing that in case of Ravindra, the enmity was greater and that while Ishwar was away from Ambernath, at the time of murder, Ravindra was very much in Ambernath. This Court felt that this distinction drawn by the learned Addl. Sessions Judge was not proper, or at any rate was too artificial, as it was nobody's case that either Ishwar or Ravindra was the actual assailant.

22 The learned counsel for the applicant submitted that there was sufficient material to indicate serious professional rivalry and enmity between the family of the deceased and that of the accused. He also submitted that in the case of the attempt to commit murder of Arvind Lanjekar – the First Informant in this case and brother of the deceased – the deceased was a witness and that thereafter, this aggravates the matter.

23 I have carefully considered this aspect of the matter.

24 Undoubtedly, there is material to indicate that professional rivalry and even serious enmity between the two families, but there is absolutely no material to show that anything had happened soon before the murder which took on 15th August 2013. There is also no material to show that there was any contact between the accused Ravindra Gunjal and Ishwar Gunjal on one hand, and the other accused Ganesh Gunjal and Sachin Dhotre (who are said to be the actual assailants) on the other hand. This needs to be emphasized because, according to the prosecution, efforts were made to collect the Call Data Records of the telephone held by the accused Ravindra Gunjal, but admittedly, no such material records have been relied upon to support the claim of telephonic contacts. The learned counsel for the applicant submitted that this aspect could be viewed during the trial, but the learned APP on specific questioning and on the instructions of the Investigating Officer, has conceded that the investigation that has been carried out so far, did not reveal any telephonic connections between Ravindra Gunjal and/or Ishwar on one hand; and Sachin Dhotre on the other hand.

25 In my opinion, simply because the accused Ravindra Gunjal and Ishwar Gunjal had a motive to commit murder of the deceased, the orders releasing them on bail, cannot be said to be improper. So far as the accused Ishwar is concerned, except the suspicion which arises against him because of the enmity between the parties, there is not much other material. The view of this Court that there is no basic difference between the case of accused Ravindra Gunjal and that of accused Ishwar Gunjal which resulted in granting bail to Ravindra Gunjal , also remains unchanged.

26 The learned counsel for the applicant submitted that Ravindra Gunjal and Ishwar Gunjal are the actual 'master minds', and that they had utilized the services of the accused who are said to be the actual assailants. It is submitted that Ravindra Gunjal was very much in Ambernath; and that the material in the charge-sheet indicates that the accused Ganesh Gunjal and Sachin Dhotre were dragging the deceased to a place where Ravindra Gunjal probably present.

27 Without commenting on the propriety of drawing such inference, it may only be observed that, on this, Mr.Naik, the learned counsel for the respondent - accused has advanced an interesting argument. He submitted that this, even if accepted,

would only show that the attempt of the actual assailants was to drag the victim to some other place and what actually happened thereafter, was not planned.

28 It is not necessary – or even proper – to go deeper into the matter; and it may only be observed that much can be said by both the sides on these aspects. The fact, however, remains that the case against the accused Ravi and Ishwar is based basically only on the past enmity between the parties which arises out of professional rivalry.

29 Mr.Naik, learned counsel for the respondent accused submitted that even if the Court has come to the conclusion that certain incriminating material against accused Sachin was not considered by the Court of Sessions while releasing him on bail, still there was no case for cancellation of bail. He submitted that the said accused was released on bail after he had been in custody for a period of about eight months. It is also submitted that since admittedly, he has not been identified by anyone, the value that would be attached to the other incriminating circumstances, would not be much. He also submitted that admittedly the trial has already commenced, and one witness has been examined.

30 After carefully considering the matter from all the angles, I am of the view that the order releasing the accused Sachin on bail is liable to be cancelled. In order to ensure that he does not remain in custody for an unreasonably long period, the trial can be ordered to be expedited.

I am not inclined to cancel the bail granted to the other accused i.e. Ishwar and Ravindra. Since the trial is being ordered to be held expeditiously, it would be sufficient to impose some conditions upon those accused, to keep them under check and eliminate the possibility of their attempting to tamper with the evidence.

31 Under the circumstances, the applications are disposed of as follows :

OPERATIVE ORDER IN CRIMINAL APPLN NO.400/14

Application is partly allowed.

The bail granted to the respondent no.3 Sachin Dhotre by an order dated 7th May 2014, is cancelled.

The respondent no.3 Sachin Dhotre shall surrender himself into custody within a week from today.

The application, so far as it relates to respondent no.2 Ishwar Gunjal, is rejected.

The respondent no.2 shall however, report to the Shivaji Nagar Police Station, Ambarnath on every Monday, Thursday and Sunday between 5.00 p.m to 7.00 p.m, till the case against him is disposed of.

OPERATIVE ORDER IN CRIMINAL APPLN NO.675/14

Application is rejected.

However, respondent no.2 Ravindra Gunjal shall report to the Shivaji Nagar Police Station, Ambarnath on every Monday, Thursday and Sunday between 5.00 p.m to 7.00 p.m, till the case against him is disposed of.

The learned Addl. Sessions Judge shall expedite the trial and complete it within a period of four months from today.

(ABHAY M.THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**