

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLIATIOIN (BA) NO.47 OF 2017.

Ranjeetsingh Gulabsingh Chungade

..vs..

The State of Mah.thr.PSO, P.S. old City Akola, Distt.Akola.

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's orders

Mr.Anil Mardikar, Senior Advocate with Mr.Abhay
 Sambre, Advocate for the applicant.
 Mr.A.M.Deshpande, APP for the State.
 Mr.A.V.Gupta, Senior Advocate with Mr.N.R.Tekade,
 Advocate for the Intervenor.

CORAM : P.N. DESHMUKH, J.

DATE : 23rd MARCH, 2017.

CRIMINAL APPLICATION (APPP) NO.229 OF 2017.

Heard learned counsel for the parties.

This application is for intervention by original complainant.

For the grounds mentioned in the application and as not
 seriously opposed, same is allowed and accordingly disposed of.

CRIMINAL APPLICATION (BA) NO.47 OF 2017.

1. One of the accused involved in Crime No.169 of 2015, registered at Police Station Old City, Akola for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and under Sections 3, 4, 25, 27, 29 and 30 of the Arms Act has filed this

application for grant of bail.

2. Heard learned Senior Counsel Shri Anil Mardikar for the applicant, learned Additional Public Prosecutor Shri A.M.Deshpande for the State and learned Senior Counsel Shri Avinash Gupta for intervenor.

3. Before proceeding on the merits of the case, learned Additional Public Prosecutor has pointed out earlier order of this Court dated 22nd July, 2016 and has contended that in view of same, present application is not tenable as earlier application was allowed to be withdrawn with liberty to file a fresh before the appropriate forum. Learned Additional Public Prosecutor further contended that while granting such liberty, this court had considered the fact that when earlier application was considered by the learned Sessions Court after filing of charge-sheet, there was no C.A.report forming part of charge-sheet and as such, on considering this changed circumstance application was allowed to be withdrawn with liberty in favour of applicant to approach the learned Sessions Court. Admittedly, applicant after approaching learned Sessions Court and on rejection of his application for bail has filed present application.

4. Considering the facts as aforesaid and in view of admitted fact of C.A.report not forming part of charge-sheet when earlier application was considered by the learned Sessions Judge and thus, this Court had granted liberty and then applicant since had approached the learned Sessions Court, however, application since is rejected has approached this Court by filing present application, same is found maintainable.

5. Learned Senior Counsel for the applicant has submitted that case of prosecution is based on circumstantial evidence, mainly on the theory of 'last seen together' and it is stated that there is no eyewitnesses to incident of assault on deceased Kishor Khatri by applicant. For this purpose, statements of witnesses Vikrant and Ashok Dhanuka are read and from contents of these statements it is contended that case of last seen together cannot said to be established as according to their statements, deceased had left with applicant at around 12.00 noon while his dead body was recovered after long a gap of five hours at about 5.00 in the evening at a long distance wherefrom he was seen in the company of applicant, in a field situated at the outskirts of Akola city. It is therefore submitted that statements of these witnesses do not establish theory of last seen.

6. Learned Senior Counsel then referred to second set of witnesses namely; Prakash and Vishal and has contended that the prosecution is relying upon their statements to establish continuity of deceased being in the company of applicant on the day of incident in the noon hours, while according to these witnesses they had seen them together. Learned Senior counsel then referred to another set of witnesses namely; Prashant and Ravindra on the point of assault upon deceased by co-accused Jassi Policewala and applicant and has contended that their statements are not reliable being recorded five days after the incident though they claim to be eyewitnesses to the incident. It is contended that admittedly there are no statements of witnesses from Somthana locality where incident is alleged to have occurred nor there is explanation put forth for non-recording of statements of such witnesses.

7. Apart from above submissions, it is further contended that other material recorded by prosecution is in the form of spot panchanama where from it is established that near the spot there are fields of Kishor Patil and Wasudev Sawarkar, inspite of that no statement of such adjoining field owners and labours of adjoining fields is on record. On the aspect of seizure of vehicle, owned by applicant, from a distance of about one kilometer from the spot of incident, it is submitted that though it is the case of prosecution that applicant along with co-accused and deceased travelled to the spot situated at Somthana in said vehicle which broke down and thus was required to be toed down up to the distance of about one kilometer at some other place where from it came to be seized, C.A.report do not establish fact of vehicle having reached the spot as sample of mud collected from its wheels and examined by the Forensic Science Laboratory (FSL) along with sample of earth from the spot certifying same to be not tallying with each other. As such, it is contended that FSL report about soil found on the wheels of the vehicle and sample which is collected from the spot since are inconclusive, it does not establish that said vehicle had reached to the spot, occupied by deceased as well as applicant and co-accused.

8. Similarly, it is contended that as per the case of prosecution due to break down of said vehicle it was toed with the help of one rope and the pieces of rope seized from the spot as well as one which was tied to the vehicle were sent to C.A., also do not establish that they are the same rope and had thus, contended that case of prosecution fails on this count also. It is further contended that even on considering FSL report with regards to use of weapon Pistol involved in this crime which came to be seized from the vehicle of applicant, from the FSL report though can

said to be in working condition and was used before it was sent for testing to the Forensic Science Laboratory, the FSL report is stated to be silent if hole found on the shirt of deceased was out of the gun-shot fire from said Pistol or it is by the same Pistol which is sent for its testing. It is thus contended that there is nothing in the FSL report to establish that either of the pistols which are seized in this crime are at all used in the firing took place in this crime, as according to the FSL report weapons are stated to be in working condition and are said to be used prior to its testing.

9. With reference to statements of eyewitnesses recorded five days after the incident, applicant has relied upon case of **State of Rajasthan ..vs.. Teja Singh and ors.** reported in **(2001)3 SCC 147.**

With reference to case of prosecution of criminal antecedents against applicant and chart filed along with affidavit-in-reply, it is submitted that out of 43 offences registered against the applicant during the period from 1993 to 2005, he is acquitted in all the cases except in the case at Sr.No.1 which is registered for the offence punishable under Section 307 of the Indian Penal Code and trial of which is already commenced, and by referring to relevant provisions of Section 437(ii) of the Code of Criminal Procedure has contended that fact of pendency of criminal cases by itself would be no ground to reject the application and for that purpose has referred to the case of **Maulana Mohammed Amir Rashadi ..vs.. State of Uttar Pradesh and anr.** reported in **(2012)2 SCC 382** and thus contended that by imposing sufficient conditions, applicant be released on bail who even otherwise is facing ill-health and also on the count that co-accused Rupesh and Rajusing are released on bail by this Court.

10. Learned Additional Public Prosecutor Shri A.M.Deshpande, has opposed the application as per reply filed on record and has contended that no case is made out for grant of bail on the ground of parity as that of other co-accused, as co-accused who are released on bail have no direct involvement in the crime as one of the accused released namely Rupesh is a driver of applicant while Rajusing's involvement is only by way of his being present in the Car. It is therefore submitted that case of these two co-accused is on entirely different footing than that of applicant.

Learned Additional Public Prosecutor while referring to the statements of witnesses referred earlier namely; Vikrant, Khushwaji and Ashok has submitted that their statements establish fact of applicant leaving with deceased from the Mall at around 12.00 noon and from statements of witnesses Vikrant, Ranveer and Ashok it is stated that said statements establish that after leaving from that place, as stated by earlier witnesses, applicant and deceased were found together, which sequence is complete from the statements of eyewitnesses namely; Prashant and Ravindra who had involved applicant along with co-accused as an assailant of deceased to have fired upon him from a Pistol. It is thus contended that evidence available on record cannot said to be circumstantial evidence alone as eyewitnesses account directly establishes involvement of applicant.

11. Learned Additional Public Prosecutor by referring to the statements of above witnesses has then referred to the Postmortem notes and has contended that contents of statements of these witnesses, particularly those eyewitnesses, corroborate with the postmortem notes

where the surface injuries found on the person of deceased were on his neck by knife and gun shot wound. With this submission, by relying upon the case of Neeru Yadav ..vs.. State of Uttam Pradesh and anr. reported in (2014)16 SCC 508, it is concluded that application is liable to be rejected as apart from available evidence as aforesaid, applicant is a criminal element having number of crimes registered against him as per Chart filed with affidavit-in-reply.

12. Learned Senior Counsel Shri Avinash Gupta appearing for Intervenor, in addition to submission advanced by learned Additional Public Prosecutor, has contended that there is voluminous evidence against the applicant and from the statements of eyewitnesses applicant's involvement is clearly established. It is also contended that from the statements filed with the charge-sheet, case of prosecution based on last seen theory is also established which statements are materially corroborated with other evidence in the form of seizure of live cartridge and two pistols from the vehicle, admittedly registered in the name of applicant and one empty cartridge which came to be seized at the instance of applicant from the Office of Labour Union which was used by applicant and where he used to visit as has come on record from the statement of Ishwarsing Rajput.

With reference to recording of statements of eyewitnesses belatedly, it is submitted that said aspect needs to be considered with reference to criminal background of applicant as there are number of cases registered against him under serious offences like murder, attempt to commit murder, kidnapping, etc. and as such, he is a terror in the locality and thus, ordinary man before making any statement against such individual shall think twice and in that background, statements of

eyewitnesses give sufficient explanation of their remaining silent till applicant came to be arrested on 7th November, 2015 and immediately on the following day, on reading through the newspaper item, these witnesses knowing that this applicant is arrested, gathered courage and gave statements to the police. It is thus contended that it is not the case that inspite of knowledge of arrest of applicant these eyewitnesses remained silent for a considerable period thereafter and thus, submitted that as explanation put forth is convincing, these statements need not be kept out of consideration on this count alone as the explanation put forth cannot said to be absurd at all.

13. It is further contended that though applicant has claimed bail, apart from merits, on parity as well as on the ground of his ill-health, same cannot be granted on any of these grounds as there is ample evidence establishing direct involvement of applicant. So far as grant of bail on parity is concerned, it is submitted that case of applicant is totally different than that of co-accused who are released on bail. So far as bail on ground of ill-health is concerned, it is submitted that applicant being a influential person has already managed to remain out of jail and most of the time is in hospital and even while being hospitalized was never found on his bed and in this regard four police officials deputed as guards came to be dismissed and in support of this submission has placed on record copy of suspension order of four police constables, who were deputed as Security Guard while applicant was indoor patient in the hospital.

14. Lastly, it is contended that applicant's involvement is further found established as according to the DNA Test reports blood detected on the knife used in the crime as well as on the shirt, full pant, under-wear

of deceased is certified to be identical and of the same source of male origin as it matches with the DNA profile of deceased Kishor. It is therefore submitted that considering all these aspects application be rejected.

15. In the background of submissions advanced as aforesaid, perusal of report lodged by brother of the deceased dated 3rd November, 2015 reveals that deceased was a businessman dealing in Property and Real Estate, and as such was knowing applicant, as at the material time construction of some Mall was in progress on the land owned by applicant and whenever any issue like renting shops etc., used to crop up, deceased used to mediate and settle the same. It is further contended that on 3rd November, 2015 at around 12.00 noon deceased was called by witnesses namely Khushwaji, Ashok and Vikrant at the Mall where they along with applicant at around 1.00 p.m. discussed about the date to be finalized for inauguration of Mall and thereafter applicant left the spot along with deceased in his vehicle bearing registration MH 30-P-3040. Said fact was informed to complainant by Khushwaji, Virkant and Ashok. It is further contended that on the same day at 5.15 p.m. complainant's nephew Mayur Khatri informed that complainant's brother was lying in dead condition near one Dhaba at Somthana. Complainant accordingly visited the spot and found his brother lying dead at the spot. Accordingly, report came to be lodged against the applicant suspecting him to be involved in the murder of deceased as relations between applicant and deceased were strained since prior to incident on certain issues.

16. In continuation to the contents of report as aforesaid,

statements of Vikrant and Ashok thus, need to be considered and on perusal of same, their statements establish that at around 12.00 noon after meeting held at Mall applicant along with deceased Kishor left in applicant's vehicle in their presence and did not return for a considerable time, therefore Vikrant along with Khushwaji and Ranvir went to search them at Union Office where applicant used to visit but did not find them there also and at 5.00 p.m. learnt from complainant that dead body of Kishor was lying at Somthana. They accordingly visited the spot and suspected applicant to be involved in the murder of deceased as applicant was not getting any commission out of sale of shops in the Mall which was entirely taken by deceased and has thus eliminated deceased Kishor. Similar is the statements of Khushawaji and Ashok Dhanuka. Considering statements of above three witnesses, thus prima facie it is established that on the day of incident deceased left with applicant at 12.00 noon from the Mall. Statement of Prakash and Vishal are to the effect that on that day at around 12.05 p.m. they have seen applicant along with one unknown person in a Car and person who was murdered at Somthana was found to be the same person who was travelling with applicant in the Car. It is further stated by these witnesses that they could identify deceased to be the same on the strength of his photograph, which was seen in the newspaper after the incident. It is material to note that their statements are recorded on 4th November, 2015 i.e. on the following day of the incident.

17. Thus, considering above two set of witnesses, it is noted that earlier three witnesses established fact of deceased leaving with applicant at about 12.00 noon, from whose statements it has come on record that person who is referred by them as unknown person with the applicant in

his Car was deceased as he was identified by them on the following day of incident on seeing his photograph in the newspaper, who according to statements of Prakash and Ravindra were thereafter seen by Prakash and Vishal along with co-accused Ankush and Jassi Policewala

18. Thus, to establish the chain of events, statements of Prashant and Ravindra appear to be relevant and from their statements it has come on record that on 3rd November, 2015 at around 1.30 p.m. when both of them were proceeding on two wheeler towards Somthana, in one field they saw applicant along with co-accused Jassi Policewala and one unknown person along with one white-coloured Safari Car occupied by one person in its rear seat. Statement of Prashant further reveals that there was some talk between applicant and co-accused however noticing applicant, they did not find it safe to stop as they saw that some quarrel had taken place and had noted that co-accused Jassi has committed assault by knife on the neck of said unknown person due to which he fell down and then applicant fired on him from the firearm which was possessed by him.

19. Statements of both these witnesses thus complete the chain of events of the case of prosecution establishing involvement of applicant as an assailant of deceased. In fact, from their statement it is noted that even after co-accused Jassi committed assault by knife on neck of deceased, applicant thereafter opened fire even when deceased had already fallen down due to injuries on his neck.

20. Though it has been argued on behalf of applicant that statements of either of these eyewitnesses are not reliable as same are

recorded five days after the incident i.e. on 8th November, 2015, I find substance when it is submitted on behalf of prosecution that had there been no explanation given by these witnesses for not stating earlier or had the explanation given by them can said to be totally absurd, only then statements could have been doubted to be acted upon. However, as explanation put forth by these witnesses when considered reveals that neither of these witnesses dared to make statement to police as applicant who is referred as 'Pahelwan' is a terror and it is only when they learnt that applicant was arrested by police, they on their own by visiting police station had given their statements. As such, explanation put forth by these witnesses appears to be most reasonable, particularly in view of the fact of criminal background of applicant which can be seen from the chart annexed to the affidavit-in-reply wherein 43 crimes for different offences including murder, attempt to cause murder and kidnapping etc. are registered against the applicant.

21. In fact, it is found that in one of the cases applicant had committed assault by opening fire on the city Deputy Superintendent of Police which trial is stated to be in progress. In short, chart when perused reveals that applicant is a criminal element. Though he might have been acquitted in all those cases, fact remains that ordinary persons can definitely have fear in their minds about such criminal elements in the society and thus, possibility of prosecution witnesses Prashant and Revindra not coming forward to give statement against applicant as put forth by them, appears to be reasonable. In the circumstances, statements of both these witnesses when considered, prima facie establish involvement of applicant as an assailant of deceased.

22. Moreover, statements of these two eyewitnesses are materially corroborated with the postmortem report on record where from deceased is stated to have sustained chop wound over his neck starting from border of mandible extending up to the 3 cm. away from mid line towards right side and obliquely placed of size 10 cm. x 1 cm. x muscle deep. 3 cm. below injury no.1 mentioned above and 5 cm. above suprasternal notch and also certified to have sustained lacerated gunshot wound (entry wound) present over mid line of chest in between two nipples, 12 cm. from right nipple and 12 cm. from left nipple, 25 cm. above from umbilicus, 11.5 cm. below suprasternal notch of size 0.8. cm. x 0.8 cm. x cavity deep, margins are irregular with aberatted collar, reddish brown. Shape of wound is circular and track of wound: Skin subcutaneous tissue- middle 1.3" of sternum pleura – piercing lower lobe of right lung – Pericardium piercing right atrium and through – piercing of diaphragm – exist through 9" inter-costal space and muscle – subcutaneous tissue- skin.

Both these injures co-relate with the eyewitnesses' account as well as with the cause of death which is stated to be hemorrhage and shock due to injury to vital organs in case of firearm injury.

23. Having considering available evidence against applicant as aforesaid, his involvement is prima facie established in the present crime which is further found substantiated from the C.A.report where on testing two countrymade pistols with magazines and one empty pistol cartridge and empty magazine of pistol, it is opined that pistols are in working conditions. They are capable of chambering and firing 7.65 pistol cartridges, residue of fire ammunition-nitrite was detected in the

barrel washings of Exh.1 and Exh.2 showing that the pistols were used for firing prior to their receipt in the laboratory. Randomly selected one 7.65 MM pistol cartridge from Exh.3 was found to be live on test firing through the countrymade pistol in Exh.1. Randomly selected one 7.65MM pistol cartridge from Exh.4 was found to be live on test firing through the country made pistol in Exh.2.

The Exh.4 is a fired 7.65 MM pistol cartridge case. The characteristics features of firing pin impressions examined under comparison microscope on the empty in Exh.5 tally with that on the 7.65 MM pistol cartridge test fired through the countrymade pistol Exh.1, showing that the empty in Exh.5 has been fired through the country made pistol Exh.1.

Above results of analysis thus establish that pistol found involved in the present crime and is seized under panchanama from the dashboard of applicant's car along with live cartridge and empty cartridge, which were seized at the instance of applicant from the office of Labour Union where he used to regularly attend, are found used in the present incident.

24. Similarly, from the C.A.report report it is further noted that shirt, Exh.25, which was on the person of deceased when examined together with fire arms, it is noted that Detection of metallic lead and copper in absence of blackening and powder residues around the periphery of encircled shot hole on the front right side middle of full open shirt in Exhibit 25 and detection of metallic lead and copper in absence of blackening and powder residues around the periphery of encircled shot hole on the back side middle portion of full open shirt in Exhibit 25 are respectively consistent with the passage and wipe of

copper jacketed bullet having been fired from beyond the powder range of the weapon.

25. In the background of above stated facts, ratio laid down on behalf of the applicant in the case of *State of Rajasthan ..vs.. Teja Singh and ors.*, cited supra, cannot said to be strictly made applicable having distinguishing facts as in that case evidence of eyewitnesses was suspected because of the fact that though they were available in the village, their statements were recorded after five days of the incident for which explanation given by Investigating Officer was not satisfactory. As against this, in the application in hand, as stated aforesaid, explanation putforth by both the eyewitnesses when considered along with criminal background of applicant appears to be reasonable to be acted upon and as such delay whatsoever caused in recording their statements, in strict sense, cannot be considered at this stage.

26. Another authority relied on behalf of applicant in the case of *Maulana Mohammed Amir Rashadi ..vs.. State of U.P. and anr.*, cited supra also can not be applied having distinguishing fact, as in that case one of the points which was for consideration while granting bail to sitting M.P. was if he can be enlarged on bail by imposing certain conditions and having considering the fact that applicant was a sitting M.P. facing criminal cases and was acquitted in the most of the cases in which he was earlier tried, it was held that merely on the basis of criminal antecedents claim of the applicant for grant of bail cannot be rejected. The Hon'ble Apex Court in the same case has, however, observed that it is the duty of the Court to find out role of the accused in the case in which he has been charged and other circumstances.

27. In that view of the matter, considering the fact of applicant having indulged in committing murderous assault on serving Deputy Superintendent of Police and since number of crimes are registered against him, do not entitles him to be released on bail even by imposing conditions, more particularly when from the additional affidavit on record filed by the intervenor, it is brought on record that very often applicant got himself admitted in the hospital by using his influence and that in the night intervening 10th and 11th February, 2017 while applicant was in medical jail ward by using his financial influence got himself released and was effectively campaigning in the Corporation elections in which his son was contesting. On noticing his absence by doctor on duty, he immediately informed this fact to his superior officers, upon which applicant was searched and was brought back to the jail. On holding enquiry Superintendent of Police suspended four police constables who on the material night were on duty as Security Guard. Copy of suspension order of said police constables corroborates contents of said affidavit. Applicant rebutting contents of said affidavit has filed on record additional affidavit in which he has merely denied its contents.

28. Having considering facts as aforesaid, along with ratio laid down by the Apex Court in the case of *Neeru Yadav. ..vs.. State of U.P. and anr.*, cited supra wherein it is held that -

“Liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and accentuated further on human rights principle. It is a cardinal value on which civilization rests. It cannot be

allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. But, liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw liberty that it has sanctioned to an individual when an individual becomes a danger to collective and to societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of the social stream. It is impermissible.”

In view of ratio as aforesaid, and as it is further observed by the Apex Court that while considering grant of discretionary relief of bail, it is necessary to keep in mind that such exercise cannot be arbitrary, capricious and injudicious and heinous nature of crime warrants more caution, when criminal antecedents of applicant as per Chart filed along with affidavit-in-reply are duly considered, observations of Hon'ble Apex Court as aforesaid can strictly be made applicable.

29. Having considering facts as aforesaid, application is liable to be rejected. Hence, following order.

Application is rejected.

Needless to say that trial Court shall not get influenced with

the observations as aforesaid and shall independently evaluate the evidence on record at the time of trial.

chute

JUDGE