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

BAIL APPLICATION NO. 896 OF 2018

Mahesh Baburao Patil

..Applicant

Vs

The State of Maharashtra

..Respondent

Mr. Mahesh Jethmalani, Senior Advocate a/w Sudeep Pasbola, Ms. Gunjan Mangla I/b M. Goswami for Applicant.

Ms. J.S. Lohokare, APP for State.

Mr. M.S. Mohite a/w B.D. Shinde I/b Sachin Thorat for Intervener.

CORAM : A.S.GADKARI, J.

DATE : 1st August 2018.

P.C.:-

1] This is an application under Section 439 of Cr. P.C. for bail in C.R. No.I-707 of 2017 dated 22.12.2017 registered with Manpada Police Station, Dombivali, District- Thane under sections 120-B, 302 and 115 of Indian Penal Code and under sections 3, 25 of Indian Arms Act.

2] Heard Mr. Jethmalani, the learned senior counsel appearing for the applicant, Mr. Mohite, the learned counsel appearing for the Intervener and Ms. Lohokare, the learned APP for the State. Perused the chargesheet and report submitted by the Investigating Officer.

3] The first information report is lodged by Mr. Vyankat R. Andhale, Police Inspector attached to Local Crime Branch (L.C.B.), Thane (Rural).

It is stated in the said report that, under the directions of the Superintendent of Police, Thane (Rural), the said L.C.B. conducts parallel investigation in serious offences. On 22.7.2017, unknown persons after firing on a Borello Car which was carrying cash belonging to Diamond Wine Shop caused injuries to its occupants and tried to commit robbery of the said cash at Wada-Bhiwandi road within the jurisdiction of Ganeshpuri Police Station, Thane (Rural). A crime bearing No.208 of 2017 under sections 395, 397 of the Indian Penal Code and under sections 3, 25(c) of Indian Arms Act has been registered in that behalf. That, again on 22.10.2017, unknown persons at the point of pistol/fire-arm committed robbery of a bag containing cash of rupees one lakh belonging to M/s Pooja Traders of village Ambadi and therefore a crime bearing No.236 of 2017 under section 394 of the Indian penal Code and under sections 3, 25 of Arms Act has been registered with Ganeshpuri Police Station, Thane (Rural).

It is stated that, when the parallel investigation of the said two

crimes was conducted, after technical analysis of various facts involved in the said crimes, the names of five accused persons namely (I) Kailash P. Ghodwinde, (ii) Dilip S. Kanojia, (iii) Raju N. Shetty, (iv) Kasim Ansari and (v) Vijay Menbansi were revealed and therefore the said accused persons were arrested in CR No.208 of 2017 on 13.12.2017.

That, during the course of the custodial interrogation of the said accused in CR No.208 of 2017, the accused Vijay Menbansi disclosed that in the month of February 2017, the applicant herein in his Office situated at village Sagarli, Dombivali (East) in presence of co-accused Sujit Nalawade and the bodyguard of the applicant namely Vijay @ Valya Bakade (co-accused) gave a contract of Rs.50.00 lakhs to him to kill the intervener Mr. Kunal Patil who is also a sitting Corporator of the Kalyan-Dombivali Municipal Corporation. That the co-accused Sujit Nalawade i.e. the friend of the applicant for and on behalf of applicant Mahesh Patil from time to time gave Rs.10.00 lakhs to the said Vijay Menbansi. The co-accused Vijay Menbansi thereafter gathered his friends Rajesh Patel and Rahulsingh @ Bhausahab from the State of Utttar Pradesh and paid them Rs.80,000/- and Rs.60,000/- respectively in advance for committing murder of Kunal Patil. The co-accused Vijay Menbansi asked them to make preparation by

procuring fire-arms and cartridges for committing murder of Kunal Patil. However, the said Rajesh Patel and Rahulsingh could not complete the job given to them by Vijay Menbansi.

That co-accused Vijay Menbansi thereafter gathered all co-accused on 29.11.2017 at a open space near Thakurli and informed them about the prospective commission of murder of Kunal Patil. The accused persons were having country made fire-arms along with cartridges. The accused persons kept watch on the movements of Kunal Patil from their two and four wheeler vehicles, however, could not get an opportunity to execute their plan. That on 30.11.2017 and subsequent thereto also the accused persons tried to commit murder of Kunal Patil, however, they could not succeed.

It is lastly stated that, the applicant alongwith his friend Sujit Nalawade and his body guard Vijay Bakade hatched a conspiracy to commit murder of Kunal Patil and by giving contract of Rs.50.00 lakhs to co-accused Vijay Menbansi in the office of the applicant. However, as the applicant and other accused could not get appropriate opportunity, the plan of committing murder of Kunal Patil could not be executed. In the premise the first information report is lodged.

4] Mr. Jethmalani, the learned senior counsel appearing for the applicant submitted that, the statement given by Vijay Menbansi to the police during the course of investigation of the said crime No.208 of 2017 is not an admissible piece of evidence and therefore the same cannot be taken into consideration. He submitted that, there are three witnesses to the alleged conspiracy which was hatched in the Office of the applicant namely Sunil, Shyam, and Rakesh who despite the knowledge of probable commission of a cognizable crime, did not give information to the police which is contrary to section 39 of Cr. P.C and therefore the said statements creates doubt in the mind. He submitted that, there is political rivalry between the applicant and the said Kunal Patil who is also a sitting Corporator of Kalyan-Dombivali Municipal Corporation from the same political party of which the applicant belong and therefore there is every possibility that the police at the instance of said Kunal Patil cooked up the present case. He submitted that, there is no recovery made at the instance of the applicant. He submitted that, though there are certain antecedents at the discredit of the applicant, same cannot be a ground for denying bail to him. He lastly submitted that, the police have already completed investigation of the crime and submitted chargesheet and therefore

applicant may be released on bail.

5] Mr. Mohite, the learned counsel appearing for the Intervener and Ms. Lohokare, the learned A.P.P vehemently opposed the application. Mr. Mohite submitted that the Intervner Mr. Kunal Patil is an eye witness in a crime under section 302 of the Indian Penal Code committed by the applicant Mahesh Patil and trial of the said case is in progress. It is the reason that, the applicant herein intends to eliminate Kunal Patil so that, his chances of conviction in the said case would become blink. Mr. Mohite relied on the affidavit of Mr. Kunal Patil and placed on record antecedents at the discredit of the applicant.

The learned A.P.P has pointed out the statement of witnesses and other crucial aspects of the present case which have been revealed during the course of investigation. The learned A.P.P on instructions from the Investigating Officer submitted that, the co-accused Rahulsingh @ Bhausahab has been arrested by the police today and is produced before the concerned Magistrate and crucial clues about the present crime during the course of interrogation of Rahulsingh may further be revealed. The learned Counsel for the Intervener and learned A. A.P.P therefore submitted that the present application may be rejected.

6] The facts giving rise for lodging the present crime and as reflected from the first information report have been stated in the forgoing paragraphs.

There are four witnesses who have in unequivocal term stated about the conspiracy hatched by the applicant and co-accused Sujit Nalawade in the office of applicant with Vijay Menbansi. The said witnesses have stated that the applicant has spread terror in the locality of the city of Dombivli. The applicant along with co-accused and Vijay Menbansi tried to eliminate Intervener Mr. Kunal Patil. The applicant used to discuss with Vijay Menbansi in his Office about the said conspiracy. The record indicates that, Vijay Menbansi with the help of other three accused, tried to commit murder of Kunal Patil. However they could not succeed in executing the said plan and therefore Intervener Kunal Patil is saved. The record further indicates that, the accused persons namely Sujit Nalawade, Vijay Menbansi and Vijay @ Valya Bakade were constantly in touch with each other. As noted in the argument of learned A.P.P, the co-accused Rahulsingh has been arrested by the police today and is being interrogated.

7] Mr. Kunal Patil in his statement to the police has sated that, on 10.4.2017 his cousin brother Vijay was brutally murdered by the applicant Mahesh Patil and co-accused Sunil Bhoir and Anil Bhoir with other accused inside Grampanchayat Office at Golavali villge. He has stated that, his cousin brother Vijay Wandar Patil was a Member of Grampanchayat and

when he was sitting in the Grampanchayat office for official work, the applicant Mahesh Patil along with co-accused Sunil Bhoir and Arun Bhoir, Vijay Bakade and other accused committed his murder by firing from a revolver and with swords/choppers and a CR bearing No. 97 of 2007 under sections 148, 149, 307, 302 of Indian Penal Code and under sections 3, 25(1)(a) 27 of Arms Act and has been registered against the applicant and other accused persons. That the applicant has been released on bail and the said case as of today is subjudice. The intervener Kunal Patil is an eye-witness in the said crime. The said Kunal Patil has expressed his apprehension that, if the applicant is released on bail, his life will be again put in danger by the applicant and co-accused. Another witness Dr. Wandar Patil, father of Vijay Wandar Patil has also corroborated the version of Kunal Patil.

8] The police report produced by the learned A.P.P and the affidavit of the Intervener Kunal Patil indicate that, the applicant is having following criminal antecedents at his discredit:-

	<u>C.R. No.</u>	<u>Police Station</u>	<u>Sections</u>	<u>Court Case No</u>
(1)	28/1997	Manpada	302, 307, 34 of IPC	243/1997 subjudice
(2)	113/2002	Manpada	147, 148, 149, 452,	444/2002

			363, 365, 387, 323, 504 of IPC	subjudice
(3)	I-97/2007	Manpada	147, 148, 149, 302, 307 IPC r/w 3, 25(1) (A) 27 Arms Act and 37(1) 135, Mumbai Police Act.	323/2007 subjudice
(4)	188/2011	Manpada	147, 148, 326, 504 of IPC	453/2011 subjudice
(5)	704/2015	Manpada	143, 147, 149, 353, 332, 333 504, 506 of IPC r/w Criminal Amendment Act No/ VII r/w 33(3) 135 of Mumbai Police Act	450/2016 subjudice
(6)	46/2017	Manpada	506(2) 34 of IPC	Police Investigation
(7)	342/1999	Dombivali	324, 504, 34 of IPC	313/1999.
(8)	291/2000	Dombivali	143, 147, 148, 149, 323, 326, 307 of IPC and 37(1) 135 of Mumbai Police Act	483/2001 subjudice
(9)	76/2001	Dombivali	25(1)k of Arms Act	4/2003 subjudice
(10)	26/2003	Dombivali	365, 323, 504, 506, 34 of IPC	160/2003.
(11)	74/2003	Dombivali	25(1)(B) Arms Act and 37(1)135 of Mumbai Police Act.	
(12)	126/2012	Tilaknagar	324, 427, 34 of IPC	742/2012.

(13)	66/2017	Tilaknagar	143, 144, 146, 148, 149 341, 504, 506, 506(2) of IPC and 37(1)(3) 135 of Mumbai Police Act	35/2017
(14)	348/2009	Mhatma Phule Chowk	399, 402 of IPC and 37(1)(3) 135 of Mumbai Police Act	549/2009 subjudice
(15)	16/2004	Shil Daighar	506(2), 323 of IPC and 3, 25 of Arms Act and 37(1) 135 of Mumbai Police Act	
(16)	147/2017	Lonawala	363, 452, 143, 147, 149 323, 504, 506 of IPC	Invstigation
(17)	707/2017	Manpada	120(B), 302 r/w 115 IPC and 3,25 of Arms Act	chargesheet filed.

Following preventative actions/ measures were initiated against the applicant by the Police.

- (1) Manpada Police Station Chapter Case No.8/1999 under section 100(e(g) of Cr. P.C. on 13.5.1999
- (2) Dombivli Police Station Chapter Case No.21/2000 under section 100(e(g) of Cr. P.C.
- (3) Manpada Police Station Chapter Case No. 3/2002 under section 100(e(g) of Cr. P.C. on 15.9.2002
- (4) Manpada Police Station Chapter Case No. 23/2011 under section 100(e(g) of Cr. P.C. on 7.10.2011

- (5) Manpada Police Station Chapter Case No. 8/2016 under section 100(e)(g) of Cr. P.C. on 25.2.2016.
- (6) Applicant was externed for a period of two years in Manpada Police Station Externment Case No.1943/2014 for two years.
- (7) Applicant was preventively detained under M.P.I.D.Act vide Dombivali Police Station Case No.1 of 2004 on 14.1.2004.

9] Mr. Jethmalani submitted that, the applicant has been acquitted from the cases mentioned at serial Nos.1, 7, 8 and 9 and the police have submitted “B-Summary” report in case mentioned at Serial No.16 above.

10] The Supreme Court in the case of Neeru Yadav Vs. State of Uttar Pradesh & Anr, reported in (2016) 15 SCC 422 in para-15 has held as under:

“15 This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.”

11] The Intervener Kunal Patil has expressed his apprehension that, if the applicant is released on bail, his life will be put in danger again at the hands of the applicant Mahesh Patil and co-accused. Apart from this, there are aforesaid antecedents at the discredit of the applicant. As noted earlier, the learned A.P.P on instructions stated that, the trial arising out of CR. No.97 of 2007 registered with Manpada Police Station, Dombivli is in progress and as per instructions of the Investigating Officer, there is apprehension that if the applicant is released on bail, there is every possibility that the applicant will bring the earlier incomplete plan of killing Mr. Kunal Patil in reality.

12] In view of the above, and taking into consideration all the aspects of the present case which shows the clear complicity of the applicant in the crime and after taking into consideration the antecedents at the discredit of the applicant, serious allegations against the applicant and the gravity of the offence, this Court is of the considered view that, the applicant does not deserve to be released on bail.

Application is accordingly rejected.

(A.S.GADKARI, J.)