

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

BAIL APPLICATION NO. 1048 OF 2018

Anant Dattatray ModhveApplicant

V/s.

The State of MaharashtraRespondent

WITH

CRIMINAL APPLICATION NO. 1150 OF 2018

IN

BAIL APPLICATION NO. 1048 OF 2018

Mangesh Anandrao TupeIntervenor

In the matter between :-

Anant Dattatray ModhveApplicant

V/s.

The State of MaharashtraRespondent

WITH

BAIL APPLICATION NO. 2113 OF 2018

Anand Shivkumar BhopeApplicant

V/s.

The State of Maharashtra & Anr.Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2239 OF 2017

Rajendra Narayan ShitoleApplicant

V/s.

The State of Maharashtra & Anr.Respondents

Mr. M.K. Kocharekar i/b. Mr. Jayant J. Bardeskar for the applicant
in ABA 2239/2017.

Mr. Aniket U. Nikam for the applicant in BA 1048/2018.

Mr. Zaheerkhan Pathan for the applicant in BA 2113/2018.

Mr. Satyavrat Joshi for R.No.2 in ABA 2239/2017 and for the
Intervenor in BA 1048/2018.

Mrs. J.S. Lohokare, APP for the State in ABA 2239/2017.

Mr. Ajay Patil, APP for the State in BA 1048/2018 and
BA 2113/2018.

Mr. Laxman Dengale, API, Crime Branch, Pune City, Anti-Robbery
Cell present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 31st OCTOBER, 2018.

P.C.:

. The applicants Anant Modhve and Anand Bhope who have been arrested in C.R.No.1089/2017 registered with Hadapsar Police Station, Pune for offences punishable under sections 302 r/w. 115, 420, 120(b), 467, 468, 471, 511 of the Indian Penal Code have filed the aforestated applications under section 439 of Cr.P.C. Whereas the applicant Rajendra Shitole has filed the application under section 438 of the Criminal Procedure Code apprehending his arrest in the same crime.

2. Heard Mr. M.K. Kocharekar, Mr. Aniket Nikam, Mr. Zaheerkhan Pathan, learned counsels for the respective applicants, Mr. Satyavrat Joshi, learned counsel for respondent no.2/Mangesh Tupe and Mrs. J.S. Lohokare and Mr. Ajay Patil, learned APPs for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The aforesaid crime was registered pursuant to the first information report lodged by Ramdas Nivrutti Gonte attached to Anti Dacoity Squad, Pune. A perusal of the first information report indicates that in the course of the investigation of C.R.No.352/2017, he had received information that due to some property dispute, the applicants - Rajendra Shitole and Anand Bhope had given a contract to the applicant - Anant Modhve and other co-accused to commit murder of Mangesh Tupe.

4. In the course of investigation, the statement of Mangesh Tupe came to be recorded. The statement of this witness prima facie indicates that he had executed a power of attorney in favour of Rajendra Shitole and Anand Bhope who was his driver and had given them limited power of presenting the sale deed for the purpose of registration. He has stated that initially Rajendra Shitole and Anand Bhope executed several sale deeds and deposited the sale proceeds in his account. He claims that subsequently they misused the power of attorney, opened a false account and misappropriated the sale proceeds. He has alleged that when questioned, Rajendra Shitole and Anand Bhope had confessed that they had forged the signature and had executed false and fabricated sale deeds and misappropriated the sale

amount. He has further stated that these applicants had abused and threatened him when told that he would lodge a police complaint. Thus, it is the case of the prosecution that the applicants - Rajendra Shitole and Anand Bhope had hatched the conspiracy to eliminate Mangesh Tupe since Mangesh Tupe had threatened to lodge a police complaint against them.

5. The records prima facie indicate that the applicants had executed several sale deeds based on the power of attorney executed by Mangesh Tupe. However there is no prima facie material to indicate that these applicants had opened any false bank accounts. It is also to be noted that though Mangesh Tupe has alleged that the applicants had executed several sale deeds by forging and fabricating his signature, he had not given details of the properties which were allegedly sold on the basis of forged and fabricated sale deeds. Nevertheless, in the course of submissions, Mrs. J.S. Lohokare, learned APP has submitted that the applicant/Anand Bhope and the co-accused/Rajendra Shitole had entered into sale transactions with Chandrakant Bahirat and one Rajeshwar Deshmukh and that they have received an amount of Rs.45 lakhs and Rs.55 lakhs from the said two persons. She has submitted that the purchasers had deposited the sale

proceeds in the account of Rajendra Shitole and that the said amount has not been credited in the account of Mangesh Tupe.

6. Mr. M.K. Kocharekar, learned counsel for the applicant has placed on record statement of bank account which prima facie indicates that the amount of Rs.45 lakhs has been deposited in the account of Prashant Tupe who is the cousin of Mangesh Tupe. The statement of account prima facie shows that the amount received from Rajeshwar Deshmukh has been deposited in the account of Mangesh Tupe. The records prima facie indicate that not only the sale proceeds have been deposited in the account of Mangesh Tupe but the mutation entries have also been changed, which fact prima facie indicates that Mangesh Tupe was aware of the said sale transactions and that he had consented for change of the revenue entries.

7. The learned APP submits that the applicants have received certain amount in addition to the price mentioned in the sale deed and that they have not deposited the said amount in the account of Mangesh Tupe. There is no prima facie material to indicate that the applicants had received any additional amount from the purchasers. There is no prima facie material to indicate that the applicants have

misused the power of attorney, forged the signature of Mangesh Tupe or that they have misappropriated the sale proceeds.

8. It is the case of prosecution that the conspiracy to eliminate Mangesh Tupe was hatched in the year 2015 and that the contract to kill Mangesh Tupe was given to the applicant - Anant Modhve. In this regard, the prosecution has relied upon the statements of Nitin Mhaske and Vishnu Raskar. The statement of Vishnu Raskar prima facie reveals that he was told that an amount of Rs.17-18 lakhs was to be recovered from one person at Pune. He had informed that he could engage services of Bandu Masal, Nitinkumar Pise to recover money. About 4-5 days thereafter, he took the applicant/Anand Bhope to one Sonali Palace and told Nitinkumar Pise and Bandu Masal to recover the said amount. The statement of Vishnu Raskar does not prima facie indicate that Anant Modhve was engaged as a contract killer to eliminate Mangesh Tupe.

9. As far as the statement of Nitin Mhaske is concerned, he claims that in the month of December, 2015, the applicant/Anant Modhve told him that some people had encroached over some land at Pune and that the said encroachers have to be forcibly evicted from the said land.

He had agreed to pay Rs.20 lakhs for evicting the said encroachers. He claims that in December, 2015 he and his friends had gone to Pune and that Anant Modhve had given a carry bag allegedly containing Rs.9 lakhs. When they informed the applicant/Anant Modhve that the bag contained only Rs.7 lakhs, he had told them that he had a contract to kill one person. He claims that there was a meeting between both these applicants i.e. Anant Modhve and Anand Bhope and that Anand Bhope had shown the house of the person who was to be eliminated and had told them that the photograph of the said person was with Anant Modhve. He claims that the applicants - Anand Bhope and Anant Modhve had told them that in case of any difficulty, the applicant - Rajendra Shitole would incur the expenses towards litigation and get them out of jail. This witness claims that he and his friends had decided not to get involved in any such activity and that they had returned Rs.3,50,000/- to Anant Modhve.

10. The statement of this witness prima facie indicates that the conspiracy to eliminate Mangesh Tupe was hatched in the year 2015. From the year 2015 till 2017 neither this witness nor any other person had taken any steps or committed any overt act in furtherance of the common object of the conspirators or in furtherance of the criminal

conspiracy. The disclosure about the alleged conspiracy is also made after a lapse of more than two years. Apart from the belated disclosure and alleged finding of photograph of Mangesh Tupe in the house of Anant Modhve, there is no other prima facie material to support the charge of criminal conspiracy.

11. It is also pertinent to note that the conspiracy to eliminate Mangesh Tupe was hatched in the year 2015 because of dispute between Mangesh Tupe and the applicants - Rajendra Shitole and Anand Bhope over the payment of sale consideration. However there is no prima facie material to indicate that there was any such dispute between the applicants and Mangesh Tupe as in the year 2015. On the contrary, the records prima facie indicate that there were several business transactions between Mangesh Tupe and the applicants till the year 2016. This fact prima facie indicates that their relations were cordial till 2016. Consequently there was no reason or motive for the applicants to enter into a criminal conspiracy to eliminate Mangesh Tupe.

12. The nature of the allegations against these applicants, in my considered view, justifies grant of bail. Furthermore, the applicants -

Anant Modhve and Anand Bhope are in custody since 14/11/2017. The investigation is completed in all respects and presence of the applicants is not required for the purpose of the investigation. Considering the above facts and circumstances, the Applications are allowed on the following terms and conditions :-

(a) The applicants - Anant Modhve and Anand Bhope who have been arrested in C.R.No.1089/2017 registered with Hadapsar Police Station, Pune are ordered to be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) each with one or two solvent sureties in the like amount.

(b) In the event of arrest of the applicant – Rajendra Shitole in C.R.No.1089/2017 registered with Hadapsar Police Station, Pune, he shall be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with one or two solvent sureties in the like amount.

(c) The applicant – Rajendra Shitole shall report to the Investigation Officer for a period of four days from 11:00 a.m. to 02:00 p.m. from the date of uploading of this order or as and when required by the Investigation officer for the purpose of interrogation.

(d) The applicants shall further report to the Investigation Officer or in his absence to the Senior Police Inspector of Hadapsar Police Station, Pune on 01st and 03rd Monday of every month until further orders.

(e) The applicants shall furnish their permanent address and temporary address, if any, and their contact details to the concerned Court and to the Investigation Officer.

(f) The applicants shall not change their residential address without prior intimation to the Investigation Officer and to the concerned court.

(g) The applicants shall not interfere with the witnesses and/or tamper with evidence in any manner.

13. Intervention Application No.1150 of 2018 stands disposed of in view of disposal of the bail application.

14. Suffice it to say that the observations recorded are prima facie in nature and shall not be construed as an expression of opinion on merits of the matter.

(SMT. ANUJA PRABHUDESSAI, J.)