

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 207 OF 2019**

Sujit @ Tatya Madhukar Patil	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO. 794 OF 2019
(APPLICATION FOR INTERVENTION)
IN
CRIMINAL BAIL APPLICATION NO. 207 OF 2019**

Pradip Manohar Mhatre	...Applicant/Intervener
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IN THE MATTER OF :

Sujit @ Tatya Madhukar Patil	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ashok P. Mundargi, Sr. Counsel a/w Mr. J. J. Bardeskar i/b Mr. Vatsal Ajay Thakkar for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent-State

Mr. Aniket Nikam i/b Mr. Vivek Nandkishor Arote for the Intervener in APPP/794/2019

CORAM : REVATI MOHITE DERE, J.
MONDAY, 19th AUGUST 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-61 of 2017 registered with the Narpoli Police Station, Thane, for the alleged offences punishable under Sections 302, 143, 146, 147, 148, 149, 120B of the Indian Penal Code; under Sections 3, 25 (1B), 27(2), 4, 17 of the Arms Act; under Sections 37(1), 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act.

3 Learned senior counsel for the applicant submitted that taking the prosecution case as it stands, at the highest, it appears that the applicant was present at the time when the conspiracy to kill Manoj Mhatre was hatched. He submitted that however, there is no material to show that thereafter, the applicant executed, participated or played any role in furtherance of the said conspiracy. He submitted that at the highest, what can be said about the applicant is that he was keeping bad company and had joined the bad company at the wrong time. Learned senior counsel relied on the Division Bench Judgment of this Court in the case of **Ajay**

Ramchandra Kokare vs. State of Maharashtra¹. He further submitted that the applicant has been acquitted in all the six cases registered against him and that the only case which is pending is C.R. No. 22/2017 registered with the Narpoli Police Station for the alleged offences punishable under Sections 15 and 16 of the Environment Act r/w Section 48 (7)(8) of the Revenue Rules. He further submitted that the applicant was taken into custody from the said C.R. i.e. C.R. No. 22/2017, in which, the applicant was arrested on 21st September 2017 and his custody was transferred in the present C.R. on 4th October 2017. He submitted that the applicant has neither been named in the FIR nor in the supplementary statement by the complainant. He further submitted that there is no material on record to show that the applicant participated in furtherance of the criminal conspiracy allegedly hatched on 14th February 2017 at about 2:30 p.m. and as such, cannot be saddled with the ultimate execution of the criminal conspiracy, in the absence of any material.

4 Learned A.P.P opposed the application. Learned A.P.P has filed an affidavit of Nivrutti T. Kadam, Assistant Commissioner of Police, (Detection-2), Crime Branch, Thane City. Learned A.P.P states that apart

1 2009 All MR (Cri.) 862

from the statement of Viddesh Sudam Patil, there are 7 confessions/statements of other co-accused recorded under Section 18 of the MCOC Act, which clearly point to the complicity of the applicant. He submitted that the confessions of the accused show that the applicant was present when the conspiracy to kill Manoj Mhatre was hatched and that all those who were present at the conspiracy had given their approval for the same. He further submitted that the CDR records also show that the applicant was present in that area when Manoj Mhatre was killed at about 8:45 – 9:00 p.m. and that the applicant was in touch with the co-accused.

5 Perused the papers. There are confessional statements of co-accused which show that on 14th February 2017 at about 2:30 p.m, all the accused including the applicant met at Sai Raj Enterprises (owner being co-accused Viddesh Patil). The said confessional statements show that they were sitting and consuming alcohol, when Prashant Mhatre was abusing Manoj Mhatre and was holding him responsible for his defeat in the election. Prashant Mhatre is also alleged to have stated that they should kill Manoj Mhatre and for that he was ready to pay Rs. 50,00,000/- and incur all legal expenses. It appears that all the accused gave an affirmative

reply to the same, pursuant to which, firing practice was done soon thereafter and at about 8:45 p.m. to 9:00 p.m., some of the co-accused executed the plan and killed Manoj Mhatre. The CDR records show that the applicant was present on the spot. Although, the applicant is not alleged to have been part of the team that ultimately executed the assault on Manoj Mhatre, *prima facie*, what appears from the confessional statements of co-accused is that the applicant was present when the conspiracy was hatched and that all the accused who were present at the spot including the applicant gave their approval when a call to kill Manoj Mhatre was given. The CDR record shows the presence of the applicant on the spot. The applicant was also present at the spot, soon after the firing. The execution was also done on the very same day i.e. between 8:45 p.m to 9:00 p.m. The judgment relied upon by the learned senior counsel does not apply to the facts of the present case and is clearly distinguishable.

6 Considering the material on record, this is not a fit case to enlarge the applicant on bail. The application is accordingly rejected.

7 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8 In view of the above order, the intervention application being Criminal Application No. 794 of 2019 does not survive. The same is also disposed of.

REVATI MOHITE DERE, J.