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

CRIMINAL BAIL APPLICATION NO. 687 OF 2017

Mahesh Chelaram Bijlani

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

WITH

CRIMINAL APPLICATION NO. 269 OF 2017

IN

CRIMINAL BAIL APPLICATION NO. 687 OF 2017

Sandeep Sunilkumar

.....Intervener

IN THE MATTER BETWEEN

Mahesh Chelaram Bijlani

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Nalawade i/b Mr. Taraq Sayed a/w Mr. Advait Tamhankar
advocate for the applicant

Mr. Tanveer Nizam i/b Mr. Ameya Lambhate advocate for the
intervener

Smt. Aruna Pai Special PP

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 1, 2019.

P.C.

Present applicant is seeking regular bail in Crime No. I-
67/2013 registered with Vashi Police Station for an offence

punishable under sections 302 r/w 34 of the Indian Penal Code and Section 3, 25 of the Indian Arms Act.

2 The prosecution case is Sunil Loharia on 16/02/2013 reached his office situated at Vashi, New Bombay. Accused no. 1 Venkatesh Chettiyar fired five rounds from close range, accused no. 3 Wajeed Qureshi assaulted him with chopper. Office boy Ganpat saw the aforesaid incident on CCTV screen while cleaning the office of the victim and raised a shout. He alongwith other employees came out of the office and saw that the victim Sunil was lying on the footpath in front of the office and accused nos. 1 & 3 were assaulting. As such, offence in question.

3 Present applicant in the aforesaid offence which took place on 16/02/2013 came to be arrested on 01/10/2014 from Bhopal and charge-sheeted in the matter.

4 In all 14 accused were charge-sheeted and the present applicant is shown to be accused no. 13. The brother of the present

applicant-accused no. 10 alongwith other co-accused including applicant is shown to be conspirator.

5 In the aforesaid background, Shri. Nalawade, the learned counsel for the applicant would urge that perusal of the entire charge-sheet would reveal that no specific overt act is attributed to the applicant in the commission of the crime under reference. According to him, there is no material on record to infer any role played by the applicant in the crime in question as the allegation in the prosecution story is that of one of the conspirator. He submits that statement of the witnesses cannot be stretched to the extent to infer that there was transmission of thought and sharing of desire on the part of the applicant to commit an offence.

6 According to Shri. Nalawade, accused no. 4 Sumeet Bachewar, vide order dated 29/07/2013 is ordered to be released. He submits that, the case of the applicant is at par with the said accused as the evidence available against the said accused is identical to that of present applicant. He would then invite attention of this Court to the

order of release of co-accused Mohammed Anis Nazir Ansari @ Bhaijan who was ordered to be released on 08/04/2014. According to him, the case of the applicant for grant of bail is on higher pedestal than that of said accused who is released by this Court vide order dated 08/04/2014 and as such, applicant is entitled to be released. According to him, the only allegation against the applicant is that of real brother of accused no. 10 who is claimed to be main conspirator in the crime in question and presence of the applicant in the office of the said accused no. 10. He would urge that the so called delivery of message on 16/02/2013 intimating applicant about the completion of alleged work i.e. murder of Sunil is based on hearsay story which cannot be used as direct evidence against the applicant. So far as the alleged use of phone of the applicant for making a call after the murder of Sunil by the accused no. 10, at this stage cannot be stretched to the extent of inferring that the applicant is involved in the crime in question. He submits that the applicant is behind bar for more than 4 years. Since the case against the applicant is based on circumstantial evidence, that too the alleged chain of events cannot be inferred to be complete, applicant

is entitled to be released on bail.

7 The learned Special PP opposed the claim and invited the attention of this Court to the order passed in Writ Petition No. 4617/2018 preferred by one of the accused Jawahar. According to him, on 18/12/2018 this Court has already expedited the trial by issuing directions to complete the same on day to day basis. The learned Special PP then would urge that the earlier bail application was withdrawn and that being so, present application is not maintainable. In addition, the learned Special PP submits that there is enough material on record to support the act of conspiracy against the applicant as it has come in the evidence of witness about the presence of applicant in the office of accused no. 10 who is a main conspirator. It is also urged that the parity cannot be invoked in favour of the applicant *qua* accused no. 4 namely Sumeet Bachewar and Mohammed Anis Nazir Ansari @ Bhaijan as after the commission of offence. Present applicant remained absconding for almost 20 months and was apprehended from Bhopal which is not the case *qua* aforesaid accused persons. As such a submission is

made that there is sufficient material to infer *prima facie* involvement.

8 Considered submissions, also statement of witnesses namely Jackson Boven, Manish Jasani, Harun Allabaksh Shaikh, Shamsuddin Pirjade, Virendra Chaturvedi, Shabbir Ali Sayyed Ali, Krishnabaldev Rushiraj.

9 Upon perusal of the entire material placed on record in support of opposing the prayer for bail what is noticed is the case of prosecution against the present applicant is based on the angle of conspiracy and the involvement of accused no. 10, real brother of applicant in the crime in question.

10 It is brought on record during investigation that applicant, being brother of accused no. 10, was seen in the office of the said accused where conspiracy claimed to have been hatched to murder Sunil.

11 Apart from above, there is circumstantial evidence on record which implicates the applicant in the crime in question. The learned counsel for the applicant though is right in submitting that there is no overt act or active role is attributed to the applicant in the crime in question, still through circumstantial evidence, his relation with accused no. 10 and his presence in his office, he having been apprehended after period of more than 20 months from the date of offence is sufficient to infer *prima facie* involvement *qua* the act of conspiracy alleged against the applicant.

12 Though the learned counsel for the applicant has rightly relied upon the order of grant of release in favour of accused no. 4 who is similarly situated and the order releasing co-accused no. 4 Sumeet and co-accused Mohammed Anis Nazir Ansari @ Bhaijan, still the fact remains that applicant's case in regard to claiming parity can be distinguished. The applicant remained untraced and was apprehended from Bhopal on 01/10/2014 against the offence dated 16/02/2013 i.e. after a period of almost 20 months. That being so and having regard to the fact that the trial is proceeding on day to

day basis, in my opinion, no case for grant of bail is made out.

13 Application as such fails, stands rejected.

14 As a consequence of above, intervention application also stands disposed of.

[NITIN W. SAMBRE, J.]