

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

CRIMINAL BAIL APPLICATION NO.1714 OF 2018

1) Divya Ashok Pahuja; and
2) Sonia Ashok Pahuja .. Applicants

Vs.

State of Maharashtra .. Respondent

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Mr.Aabad Ponda with Mr.Rupesh S. Ghadi , Advocate for the Applicants.

Ms.A.A. Takalkar, APP for the Respondent - State.

API Shobha Kharat, Unit - 10 DCB CID, Mumbai, present.
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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 8, 2019.

P.C. :

The applicant are seeking bail in connection with Sessions Case No.754 of 2016, arising out of C.R.No. 92 of 2016, registered with M.I.D.C. Police Station, and subsequently investigated by crime Branch SIT vide C.R.No.12 of 2016.

2 The brief facts stated in FIR lodged by Pradyumna Yadav are as follows:

- (a) The First Information Report ("FIR", for short) lodged by Shri Pradyumna Yadav with MIDC Police Station on 7th February, 2016, vide C.R.No.92 of 2016, alleging that the first informant was posted as Police Sub inspector in Haryana State Police force. He was working with the Crime Branch Unit IV, Sector 10 Gurgaon as Police Sub Inspector.
- (b) On 4th October, 2015, one Ashok Gujjar was shot dead by Sandip Gadoli a known criminal. Shri Ashok Gujjar was driver of one Binder Gujjar, another criminal. The offence was registered in connection with the said incident under Section 302 of IPC read with Section 25 of the Arms Act vide CR No.1271 of 2015 with Gurgaon City Police station.
- (c) On 4th October, 2015, at about 9:30 hrs., Manish Khurana, Associate of Sandip Gadoli was shot and injured. FIR was registered vide C.R.No.1272 of 2015 under Sections 307, 148 and 149 of IPC and Section 25 of Arms Act with city Gurgaon police station.
- (d) Special investigating team was constituted by DCP West Gurgaon to investigate the two cases and the investigation

was entrusted to Police Sub Inspector Pradyumna Yadav.

- (e) Binder Gujar is involved in offences like murder, attempt to murder, firing, kidnapping and about 24 cses are registered against him with various police stations in city of Gurgaon. Whereas, Sandip Gadoli is involved in similar offences and offences of extortion, robbery and 40 cases were registered against him.
- (f) On 5th February, 2016, Crime Branch, received information through reliable source regarding whereabouts of Sandeep Gadoli at Bhiwadi, Rajasthan. Based on such information, police team started search operations and went to Bhiwadi Rajasthan. On 5th February, 2016, while the police team reached Bhiwadi, they learnt that the aforesaid accused has left Bhiwadi, Rajasthan for Jaipur along with his associates. The search team then proceeded towards Jaipur on same day and reached there at about 6:30 p.m. on the basis of location/interception of mobile phones, it was revealed that the aforesaid persons and his associates are proceeding to Ajmer from Jaipur. The investigating team proceeded to Ajmer.

- (g) On 6th February, 2016, information was received that Sandip Gadoli and his associates reached Mumbai. The police teams then proceeded to Mumbai. They reached Mumbai on 7th February, 2016.

- (h) On 7th February, 2016, as per the source information, it was learnt that the gangster Sandip Gadoli is staying in Airport Metro Hotel in Mumbai. The police teams then reached the said hotel. Information was gathered about the room occupied by the aforesaid gangster. It was revealed that he was occupying room no.107. It was also learnt that the wanted accused would check out hotel shortly. The hotel record was checked and it was found that the gangster gave driving licence in the name of one Rishabh Singh, as proof of his identity. One of the team members contacted the police for their support.

- (i) Inspector Amit, constables Rajbir and Jitendra waited outside hotel. Constable Anil and Deepak were instructed to wait near reception gallery. Rajbir was told to inform local police and police control room and seek their assistance.

- (j) The room boy was asked to knock the door of room no.107. The door was opened. The police entered the room, they asked the gangster Gadoli to surrender. The gangster removed the pistol kept below pillow and fired towards the police. Apprehending danger, the policemen fired the shots towards Gadoli. The girl accompanying Gadoli came out shouting from bathroom. Gadoli pointed revolver and came towards police. The policemen tried to snatch pistol from Gadoli. There was scuffle. Gadoli fired from pistol. Head constable Paramjit suffered injury. Gadoli tried to grab the service revolver from hand of police in self defence and apprehending danger Paramjit and Pradyuman Yadav fired towards Gadoli. He was injured. In the meantime, the local police also reached and the gangster was taken to the hospital where he succumbed to the injuries before reaching the hospital. Constable Vikarm Singh sustained injury to his foot of left leg.
- (k) On the basis of statement of PSI Pradyumna Yadav, FIR was registered with MIDC police station vide C.R.No.92 of 2016. The applicant and others joined the investigation. Subsequently, special Investigation team was appointed for

conducting the investigation. The investigation was headed by Assistant Commissioner of Police, Crime Branch, and, the investigation proceeded vide C.R.No.12 of 2016.

3 The investigation proceeded. During the course of investigation, it was revealed that the complainant Pradyumna Yadav and his team members were involved in fake encounter of Sandip Gadoli and they were impleaded as accused. The applicants were purportedly part of conspiracy and were allegedly involved in providing information about the deceased. Applicant no.1 is the daughter of applicant no.2. Applicant no.1 was accompanying the deceased Sandip Gadoli at the time of incident in question. On completing investigation, charge - sheet was filed.

4 Applicants preferred application for bail before the Sessions Court, which was rejected by order dated 30th March, 2017.

5 Learned advocate for the applicant submitted that on perusal of the entire material on record, it cannot be said that there was any conspiracy involving the applicants to kill the

deceased Sandip Gadoli. It is submitted that the statement of witnesses ruled out such conspiracy. The policemen who are on duty to apprehend Sandip Gadoli had tried to take assistance of local police. The evidence on record, in any case, does not reveal that the applicants were conspirators to kill the deceased. There is no evidence on record to show that the applicants had any knowledge that the deceased would be killed or that the police party had intended to kill him in fake encounter. It is submitted that applicant no.2 was admittedly not present at Mumbai at the time of incident. The attempt was to nab the deceased who was a dreaded criminal. At the most, it can be said that the assistance was rendered to apprehend the deceased and not to kill him. The transcript relied upon by the prosecution on the contrary indicate that the applicants were shocked about learning about the incident of firing on the deceased, which resulted in his death. If they were part of conspiracy to kill him, they would not have expressed shock on learning the aforesaid fact. Two co-accused who are present in the hotel where the incident had occurred were granted bail by this Court vide order dated 13th November, 2017. It is submitted that the Court has *prima facie* disbelieved the conspiracy while granting bail to them. The applicants are entitled for bail on the ground of parity. Learned counsel pointed

out that the transcripts, and recording in the CCTV and submitted that the applicant cannot be linked with the alleged fake encounter. It is submitted that the deceased was dreaded criminal having 40 cases against him and it is difficult to believe that he would be unarmed. There is nothing to indicate that the applicant had hatched any conspiracy to kill the deceased. Applicant no.2 was concerned for her daughter applicant no.1, and to see that no harm is caused to her from dreaded gangster. There is no allegations that the applicant will commit any further offence or creating any impediment in investigation or causing evidence to disappear. The applicants were not party to the alleged incident of firing on the deceased.

6 Learned APP submitted that both the applicants are involved in the crime. Applicants are part of conspiracy to kill deceased. Mobile phone is received, which is owned by applicant no.1 and the communication made by her on the mobile shows that they had knowledge that the police personnels are going to kill the deceased Sandip Gadoli. It is also revealed from the said communication that the applicants were getting remuneration for their abetment in the crime. Transcripts of conversation was collected during the investigation. There were calls between the

applicants and the co-accused. Applicant no.1 had sent photographs of deceased to applicant no.2. Most significant information was given by applicant no.1. CCTV footage shows that the deceased was not having any weapon with him. Applicant no.1 has made a wrong statement that Sandip Gadoli was having weapon with him. Applicants were promised that flat would be given in consideration of supplying the information. There is sufficient evidence showing the involvement of applicants in crime. The applicant no.1 has provided information that the deceased was unarmed.

7 Having heard both the sides, I have perused the charge-sheet. The transcripts of the conversation indicate interaction between the applicants and the co-accused. *Prima facie*, it appears that the applicant had knowledge about plan of killing the deceased. Applicants were in contact with each other and one of them was providing the location of Sandip Gadoli to two others. Applicant no.1 is the daughter of applicant no.2. After receipt of information about location of Sandip Gadoli, from applicant no.1 to applicant no.2, the same was forwarded to wanted accused Manoj Gujar. He then forwarded the same to accused no.1. During conversation it was informed by applicant

no.1 to applicant no.2 that Sandip Gadoli is not having any arm with him. The evidence indicate that they had knowledge about the plan of killing the deceased and hence they are involved in commission of offence.

8 FIR was lodged by accused no.1. Subsequently, investigation was handed over to Special Investigating Team. The involvement of police party in fake encounter was revealed. Investigation proceeded. It is a deep rooted conspiracy to liquidate the deceased in connivance with his rivals. Statement of various witnesses were recorded.

9 From the documents collected during investigation, it was revealed that accused no.1 and his associates in order to eliminate the deceased entered into criminal conspiracy with Manoj Gujar and applicants and to take end result. It is alleged that accused had fired and killed the deceased in furtherance of conspiracy. In the FIR lodged by Pradyuman Yadav, it was stated that applicant no.1 was in the bathroom at the time of incident. She came out shouting when the police had entered in to the room and trying to apprehend the deceased. Evidence on record, however, speaks volumes of involvement of applicants in the crime.

10 During the course of investigation, it was disclosed that applicant no.1 Divya Pahuja knew the identity of Rishabh Singh as Sandip Gadoli. This fact of real identity of Rishabh Singh as Sandip Gadoli was communicated by Divya Pahuja to her mother Sonia Pahuja who in turn informed this fact to Manoj Gujar. Further Manoj Gujar used to inform this to PSI Pradyumna Yadav.

11 It is the case of prosecution that, knowing fully well about the previous enmity between Binder Gujar and Sandip Gadoli, Manoj Gujar along with accused no.1 Pradyumna Yadav, Vikram Singh, Jitendra Yadav, Deepak Kakran and Paramjit Ahlawat hatched a criminal conspiracy with applicants to kill Sandip Gadoli. In furtherance of the said criminal conspiracy, accused Pradyumna Yadav along with co-accused Vikram Singh, Jitendra Yqadav, Deepak Kakran and Pramjit Ahlawat as planned arrived in Hotel Airport Metro, Andheri (E), Mumbai, and killed Sandip Gadoli by firing with their fire arms. Thereafter, it has been disclosed that, they destroyed the original evidence from the place of offence and further created falsified evidence and filed a false complaint with the MIDC Police Station, Andheri (E), Mumbai.

12 Pradyuman Yadav, Parmjit Ahlawat, Vikram Singh, Deepak Kumar Kakran, Jitendra Yadav had entered in the hotel and instead of completing arrest formalities accused as part of conspiracy had fired from a close range on Sandip Gadoli in order to kill him.

13 The CCTV footage of the passage clearly shows that Sandip Gadoli was trying to snatch the revolver carried by accused Paramjit Ahlawat. Paramjit realizes that he stuck a wound. Although, Sandip Gadoli did not carry pistol with him, Paramjit Ahlawat falsely stated in his statement that the wound he has on his head was due to the shot fired by Sandip Gadoli in Room No.107 of the hotel.

14 It is alleged that, PC Vikram Singh Rajbir Singh's shoe was shot by Paramjeet's 0.38 revolver as a part of conspiracy, but PC Vikram Singh Rajbir Singh in his statement falsely stated that he was shot at by the pistol of Sandip Gadoli. Accused Vikram Singh Rajbir Singh and his associates also pretended a fake encounter and gave false statements parallel to the FIR, that deceased accused Sandeep Gadoli attempted to kill

them. As a part of conspiracy and with common intention accused Pradyumn Yadav, Paramjit Ahlawat, Vikram Singh, Deepak Kumar Kakran, Jitendra Yadav had destroyed original evidences from the place of offence and thereby created false evidence by tampering with the scene of offence so as to give impression that it was a genuine exchange of firing.

15 It is alleged that, on 7th February, 2016, at 7:00 hrs., during travelling towards Mumbai, accused H.C. Paramjit Ahlawat contacted one police official Shri Khanvilkar and requested to help PSI Prayuman Yadav to know the jurisdiction of police station where wanted accused Sandip Gadoli had arrived in hotel. Thereafter, PSI Pradyumn Yadav contacted Shri Khanvilkar and enquired about the jurisdiction wherein Hotel Airport Metro falls. Shri Khanvilkar told him that Hotel Airport Metro falls under jurisdiction of Sahar Police Station and told to contact API Naik of Sahar Police Station. Meanwhile, API Naik was out of jurisdiction, he told them to contact PC Torane. The said PC Torane, who was in police uniform met the police team of Gurgaon Haryana near Hogel Airport Metro where PSI Pradyumn Yadav denied to take his help as he was in uniform. Then PC Torane told them that the said place falls under jurisdiction of

MIDC Police Station and requested them to take help of MIDC Police Station. PSI Pradyumn Yadav and his team entered in Hotel Airport Metro. Though, it is a fact that, police team from Gurgaon, Haryana had arrived at Hotel Airport Metro, Andheir (E), Mumbai, in order to arrest the wanted accused Sandip Gadoli, however, the acts and criminal intent of the arrested accused police officials and men viz. Pradyumna Yadav, Vikram Singh, Jitendra Yadav, Deepak Kakran and Paramjit Ahlawat indicates that they had entered into criminal conspiracy with the co-accused (applicant accused and wanted accused) and in pursuance of the said criminal conspiracy, killed the wanted accused Sandip Gadoli.

16 The evidence from the CCTV footage recording of camera Nos.1, 5 and 6 of Hotel Airport Metro, MIDC, Mumbai, that was extracted from DVR Machine, indicate that in order to show genuine exchange of firing between wanted accused and police taken place, original evidence was destroyed and replaced with the false evidence. After Sandip Gadoli was injured and fell down in the passage, accused Vikram Singh is seen planting a fire arm held by him near Sandip Gadoli.

17 As per the conversation recording retrieved by the Cyber Forensic Expert of FSL, Kalina of mobile phones of applicant No.1 Divya Ashok Pahuja and applicant no.2 Sonia Ashok Pahuja, it was clear that the deceased Sandip Gadoli was not carrying any fire arm with him. This was also corroborated from the statement of witness Manish Khurana and Pradeep Ahuja.

18 During the course of investigation, statements of several witnesses were recorded. The statements of witnesses recorded during investigation indicate that they heard sound of shots being fired intermittently in hotel Airport Metro on 7th February, 2016. The said fact is also corroborated from CCTV TV camera footage video/audio recording. According to prosecution witnesses Manish Khurana and Pradeep Ahuja were friends of the deceased and were accompanying him in the journey. It is further alleged that Divya Pahuja was aware of the real identity of Rishabh Singh as that of Sandip Gadoli. It was also ensured that the deceased was not carrying any fire arms with him. It is the case of the prosecution that the accused in order to eliminate Sandip Gadoli hatched criminal conspiracy with Manoj Gujjar,

Soniya Pahuja and Divya Pahuja and in order to achieve the end result for their conspiracy, accused no.1 and Paramjit Ahlawant had fired at Sandip Gadoli and killed him. It is also the case of the prosecution that the accused including applicant in furtherance of conspiracy, destroyed the evidence from the place of offence and created false evidence to show that Sandip Gadoli had fired on the raiding police party. False FIR was registered at the instance of accused no.1 Pradyumna Yadav, under Sections 302, 201, 182, 193, 120-B read with 34 of IPC. The CCTV Footage of the passage show that Sandip Gadoli was trying to snatch the pistol carried by accused Paramjit Ahalawat. After this scuffle, Paramjit realised that he had sustained wound. Although Sandip did not carry any pistol with him, it was contended by accused Paramjit that he had sustained wound due to shot fired by Sandip Gadoli in room no.107 of the hotel. PC Torne informed police that the place falls within jurisdiction of MIDC Police Station and requested them to take help of the said police station. Instead of informing local MIDC police station, accused no.1 and his team entered into hotel Airport Metro. The CCTV Footage recording of camera nos.1, 5 and 6 of hotel Airport Metro was retrieved from DVR machine. It is apparent that in order to show the genuine exchange of fire between wanted accused and the police, the

original evidence was destroyed and replaced with false evidence. The co-accused were granted bail on the ground that they were not present on the spot of incident at the time of commission of incident in question.

19 According to prosecution, as per the conversation, recording retrieved by Cyber Forensic Expert of FSL Kalina of mobile cells of co-accused Divya Pahuja and Sonia Pahuja, it was clear that deceased Sandip Gadoli was not carrying any fire arm with him. This was also corroborated from the statements of the witnesses. The situation in the room occupied by the deceased indicating several incriminating circumstance against the accused. The CCTV Footage also indicates the movements of accused, police personnel before the firing and after the incident of firing which also shows their suspicious conduct and involvement in the crime. The CCTV Footage also shows that the co-accused had pushed the fire arm which was lying on the ground in the breakfast lobby by his legs. The accused provided false information in order to avoid facts being brought on record regarding seizure of 7.65 mm pistol and to empties of 7.65 mm, that was fired from different pistole. According to Ballistic Experts opinion, the fire bullet shot marking on the shoe of co-

accused is the bullet fired by 0.38 bore revolver of accused Paramjit Ahlawat. This is not the stage to evaluate or appreciate the evidence. However, *prima facie* there is substantial evidence to show the involvement of the applicants in the crime.

20 The recorded conversation of Divya Pahuja with her mother Soniya Pahuja and wanted accused Manoj Gujjar throw light on the criminal conspiracy prior to the actual killing. It is revealed from the conversion that Divya and Soniya Pahuja were about to get their remuneration after work done. The transcripts of mobile phone of both the applicants accused are having corroboration with expert opinion and other material evidence which corroborates the prosecution story. On keen perusal of the conversation received from FSL, it become clear that the both the applicant accused were having knowledge that the Gurgaon Police were in the search of Sandeep Gadoli in order to kill him. Applicant no.1 sent the photograph of Sandip Gadoli to her mother, applicant no.2. As per the report of FSL, voice samples of both the accused matched with the mobile conversation. The following circumstances also show involvement of applicants.

- i) During the journey to Mumbai, Divya Pahuja and

Sonia Pahuja decided code word language to provide information regarding Sandip Gadoli e.g. if Sandip Gadoli is accompanying Divya, she should start conversation by saying as, "Mummy, I have brought the medicine, I will take it".

ii) Divya Pahuja was well aware of the real identity of Rishabh Singh as "Sandip Gadoli" but she did not inform this fact to the investigation agencies.

iii) It is evident from the conversation that Divya Pahuja was providing details of the location of Sandip Gadoli to her mother Sonia Pahuja, who passed it to Manoj Gujar.

iv) Divya Pahuja had enquired with Sonia Pahuja whether she had forwarded onwards the clicked photo of Sandip Gadoli.

v) Divya Pahuja had informed Sonia Pahuja that Sandip Gadoli was not carrying any fire arm.

vi) Sonia Pahuja had informed Divya Pahuja about police trailing them.

vii) In the conversation of Divya Pahuja with Sonia and Manoj Gujar it is heard that both of them wanted to give Divya Pahuja some article / item.

viii) Sonia Pahuja had asked Divya Pahuja to give a hint / tip off about Sandip Gadoli while he was alone.

ix) Divya Pahuja asked her mother to “inform Manoj Gujar to provide her one house after this job” Sonia Pahuja replied that he would surely give her a house.

x) From 04-02-2016 the day Divya Pahuja left her house to accompany Sandip Gadoli till date of incident she was in constant touch over mobile phone with her mother/accused Sonia Pahuja and was providing information about Sandip Gadoli. On the fateful day i.e. on 07-02-2016 at about 10:45 am Divya Pahuja and Soniya Pahuja got in touch over mobile phone and in this conversation Sonia Pahuja confirmed that Sandip Gadoli

was in the hotel. (Thereafter this information was communicated to Manoj Gujjar at 10:48 am., and Manoj Gujjar further informed Pradyumn Yadav over mobile phone at 10:51 am about the location of Sandeep Gadoli in the hotel. This is evident from their CDR details.)

Details of CDRs of mobiles of applicant accused Divya Ashok Pahuja (Mob # 97116 57081) and applicant accused Sonia Pahuja (Mob # 99714 78300), wanted accused Manoj Gujjar (Mob # 95993 26543) indicate that they all were in touch with each other during their operation to kill Snadip Gadoli. Applicant accused Divya Ashok Pahuja had been providing information about Sandip Gadoli to applicant accused Sonia Ashok Pahuja and she in turn was providing these details to wanted accused Manoj Gujjar, who in turn was providing these details further to accused Pradyumn Yadav as it is evident from their call records as mentioned below.

xi) Call records between 10:45 am to 10:51 am dated 07/02/2016 of accused Divya Pahuja, Sonia Pahuja, Manoj Gujjar and Pradyumn Yadav indicates that they had

provided location of Sandip Gadoli in the hotel to Pradyumn Yadav.

xii) Despite being aware of the fact that the deceased Sandip Gadoli did not possess a gun at the date and time of the incident, accused Divya Pahuja deliberately gave wrong information while recording her statement u/sec. 164 Cr. P.C. that the deceased was in possession of a gun.

21 In view of the aforesaid circumstances, no case for grant of bail is made out. It is, however, clarified that observations made in this order are *prima facie* and made for adjudicating this application for bail and the trial Court shall not be influenced by the same.

22 Hence, I pass the following order:

:: ORDER ::

(i) Criminal Bail Application No.1714 of 2018, is rejected.

(PRAKASH D. NAIK, J.)