

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

CRIMINAL BAIL APPLICATION NO.2778 OF 2017

Vikram Singh Rajbir Singh

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Aabad Ponda, Mr.Samsher Garud, Mr.Santosh Avhad I/b.
M/s.Jaykar & Partners, Advocate for the Applicant.

Ms.A.A. Takalakar, 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 is 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 Februry, 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 treatment of PSI Pradyumna Yadav, FIR was registered with MIDC police station vide C.R.No.92 of 2016. the applicant and others join the investigation. 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 applicant (accused no.2) who was the part of police team from Gurgaon was arrested along with the other accused. On completing investigation, charge sheet was filed.

4 The applicant along with other accused 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 hatched or that the applicant was part of conspiracy to kill deceased Sandip Gadoli. Applicant was admittedly not involved in firing. The bare reading of the statements along with the charge - sheet, it can be seen that the

accused through their source information were directly tracking the movements of the accomplices of the deceased. On reaching Mumbai, the accused sought assistance from local police for track to apprehend the gangster. It is submitted that several police officials were approached for assistance. There are statements of witnesses corroborating the fact that immediately the accused insisted to call for ambulance urgently so that the deceased would be taken to the hospital for treatment. It is submitted that there is no evidence on record to indicate that the deceased was without weapon. The prosecution case that the weapon of deceased was handed over to his accomplice is not corroborated by any evidence and there are inconsistencies regarding the said fact in the statements of the witnesses. The weapon has not been seized from Mr.Sonu, to whom allegedly the weapon was handed over by deceased. The information given by the mother of Divya Pahuja was to nab the accused and not to kill him or execute fake encounter. The two other accused who are being attributed the role of being conspirators and part of the police team who have executed fake encounter, namely, Jitendra Yadav and Deepak Kakran (accused nos. 3 and 6) have been granted bail by this Court vide order dated 14th November, 2017. It is submitted that the applicants are entitled for bail on the

ground of parity. It is submitted that this Court while granting bail to the co-accused have ruled out the theory of conspiracy and hence, the applicant who is also being impleaded as an accused being conspirator is entitled for bail. The bullet used in commission of the alleged crime are linked to the co-accused Praramjit and Pradyumna and not the applicant. There is no evidence as to what had actually happened in the room. It is difficult to disbelieve the story narrated in the FIR lodged by Pradyumna Yadav. It is submitted that the member of police party had sustained injury and it was the need of time to retaliate and fire at the deceased in exercise of right of private defence. There was no CCTV in the room and no eye witness to the incident occurred in the room. The prosecution case is presently based on inferences. The theory that the deceased Sandip Gadoli was unarmed is not established in the charge-sheet. Learned counsel pointed out the statements of witnesses recorded during the course of investigation and submitted that there is no evidence to establish that the accused had hatched the conspiracy and killed the deceased. It is submitted that the applicant and others were the members of team which was on official duty to apprehend the dreaded gangster Sandip Gadoli against whom several heinous crimes were registered. As a part of their operation and on

learning about his whereabouts in Mumbai, the police team consisting of Pradyumna Yadav and others had reached the spot. Thus, there is no element of conspiracy being hatched by the accused to liquidate the deceased in connivance with his rival. The attempt was to apprehend him and the conversation with the co-accused Divya Pahuja and her mother was only with a view to collect information about the whereabouts of the deceased and nothing beyond that. The applicant and Paramjit had sustained injuries. By relying on the alleged evidence of CCTV Camera, the prosecution is drawing adverse inferences which are not corroborated by any evidence.

6 It is submitted that the statement of Pradeep Kumar Ahuja indicate that the deceased and others were checking out at 12:00 p.m. on 7th February, 2016, and was supposed to go to Goa. PSI Rajesh Yadav has disclosed to accused no.1 Pradyumna Yadav that Airport Hotel comes within the jurisdiction of Sahar Police Station. The accused no.1 had contacted API Santosh Khanwilkar to inquire about jurisdiction and was informed to contact API Naik from Sahar Police Station. The statement of API Naik indicate that the information was sought from him and it was

informed that constable Torne would assist him. Since the deceased was about the leave the hotel, immediate action was required to be initiated. The applicant had no motive or financial incentive to commit the alleged fake encounter. The CCTV Footage do not show his involvement in the crime. The firing took place between deceased, accused no.1 and accused no.7. Accused no.7 sustained injury on his forehead. The applicant is a constable attached to Haryana State Police force. There is no likelihood that the applicant would abscond if released on bail. The investigation is completed and charge-sheet is filed.

7 Learned APP submitted that there is sufficient evidence against the applicant showing his involvement in the crime. It is submitted that the accused including the applicant were involved in a fake encounter which is part of the conspiracy hatched between them. The applicant is not entitled for bail on the ground of parity. The applicant was present inside the room where the incident had occurred. He was present while the deceased was being shot. The accused who were granted bail were present at the reception counter. It is submitted that panchanama of seizure of weapon was recorded. It is submitted that Ballistic report indicate that the bullet passed through the

shoe of the applicant is shot from the revolver used by Paramjit (co-accused). Deceased was followed by accused and they came to Mumbai from Gurgaon Haryana. They carried 7.65 mm pistol. During investigation, it was revealed that accused collected information that deceased Sandip was without weapon and considering that situation, they killed him by firing short at him. The accused destroyed the proof and made such scene that Sandip had fired on the police party. Though the accused have stated that they tried to take assistance of police, in the investigation, it was revealed that they did not sought assistance of Sahar police station or MIDC police station. In order to make show that attempts are made they pretended that help was sought from local police. The private vehicle was ready for taking the deceased to the hospital for his immediate treatment, but, the accused tried to call ambulance. CCTV Footage shows that the accused including applicant planted weapon to show that Sandip Gadoli had weapon at the time of incident. On retrieving conversation, it is seen that the accused were following the deceased Sandip in order to kill him. There is ample evidence to show that Sandip was not armed. Learned APP relied upon the transcript of conversation ensued between the accused and submitted that there was conspiracy hatched between them to

liquidate Sandip Gadoli. The offence is of serious nature and hence bail may not be granted to the applicant.

8 Having heard both the sides, I have also perused the charge-sheet. The complaint was filed at the instance of Pradyumna Yadav vide C.R.No. 92 of 2016, registered with MIDC Police Station. The investigation was then conducted by the Special Investigation Team. The complainant Pradyumna Yadav and others were then impleaded as accused during the course of investigation. It is alleged that accused no.1 was involved in killing deceased Sandip Gadoli in connivance with the co-accused. The prosecution case is that prior to 7th February, 2016, the accused police personnel, and the other accused hatched a conspiracy to kill Sandip Gadoli who is rival of one Binder Gujjar. To execute the conspiracy they procured 7.65 mm pistol, 5 cartridges and to empties fired from another 7.65 mm pistol. It is alleged that accused Manoj Gujjar obtained information about the movement of Sandip Gadoli from co-accused Deepak Kumar Kakran and forwarded it to accused police personnels. When Sandip Gadoli was annoyed and resting in his room in hotel, the accused no.1 Pradyumna Yadav and accused no.7 Paramjit Ahalavat, police constable, fired bullets on him from their service

revolver and murdered him. They made a show of encounter by planting 7.65 mm pistol, cartridges and empties on the spot. The accused also destroyed CCTV cameras.

9 The contention of the accused who are police personnel and attached to Haryana police is that they were part of the investigating team. Their mission was to apprehend deceased Sandip Gadoli. On receipt of the information, they followed him and reached Mumbai. The co-accused Divya Pahuja and her mother were only to provide information about the whereabouts of the deceased. There was no conspiracy to kill Sandip Gadoli. It is only in the situation as spelt out in the FIR dated 7th February, 2016, lodged by Praduman Yadav, the deceased had sustained injury. It is also contented that the member of the police party had sustained injury during this scuffle at the instance of the deceased Sandip Gadoli who had fired the bullet. It is further contended that the local police assistance was sought which is apparent from the statements of the witnesses. The action was required to be initiated in emergent situation as the wanted accused were likely to check out from the hotel. The deceased was a gangster against whom heinous crimes were registered and he is a history-sheeter. As

per FIR, he was asked to surrender. However, instead of surrendering, he fired at the police party. Head constable Paramjit received injury due to firing by Sandip Gadoli and that the applicant sustained injury on the left foot.

10 On 7th February, 2016, as per directions of Commissioner of Police, further investigation of the crime was transferred to DCB CID Unit X, MIDC, Andheri. Offence renumbered vide C.R.No.12 of 2016 and further investigation continued. Special Investigation Team was appointed. The said team took over the charge on 13th February, 2016. 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 co-accused 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 infurtherance 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 applicant had entered in the hotel room along with the other accused. According to prosecution he was part of conspiracy. 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. It is also alleged that the applicant's foot was shot at by Paramjit's 0.38 revolver as a part of conspiracy. However, during investigation, the applicant had stated that he was shot by the pistol of Sandip Gadoli. The

applicant and others pretended the encounter and gave false statements. According to prosecution on 7th February, 2016, during the travel, accused Paramjit contacted police officer Shri Khanwilkar and requested to help accused no.1 to know jurisdiction of the police station where wanted accused Sandip had arrived in the hotel. Accused no.1 had contacted Shri Khanwilkar and inquired about jurisdiction of hotel Airport Metro. He was informed that the hotel falls within the jurisdiction of Sahar Police Station and he should contact API Naik of the said police station. API Naik was out of the jurisdiction and he told them to contact P.C. Torne. It is alleged that P.C. Torne, was in police uniform met the team of Gurgaon police near hotel Airport Metro. However, his help was not taken as he was in uniform. PC Torne then informed them that the said 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 alleged 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. After Sandip

Gadoli was injured and fell down in passage, the applicant is seen planting fire arm near Sandip Gadoli. 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.

11 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 applicant had pushed the fire armed 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

applicant is the bullet fired by 0.38 bore revolver of accused Paramjit Ahlawat. Despite this fact, in the FIR it was mentioned that applicant was injured due to firing of accused Sandip Gadoli. This is not the stage to evaluate or appreciate the evidence. However, *prima facie* there is substantial evidence to show the involvement of the applicant in the crime and hence, 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.

12 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Bail Application No.2778 of 2017, is rejected.

(PRAKASH D. NAIK, J.)