

ssp

ShubhaS.
Pathak

Digitally
signed by
ShubhaS.
Pathak
Date:
2020.02.28
12:53:43
+0530

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

**CRIMINAL APPLICATION NO.175 OF 2019
IN
CRIMINAL APPEAL (ST) NO. 149 OF 2019**

Vivek Krishnamurari Shrivastav ...Applicant
(original accused No.1)

vs.

Dadra and Nagar Haveli
Administration ...Respondent

**ALONG WITH
CRIMINAL APPLICATION NO. 169 OF 2019
IN
CRIMINAL APPEAL NO.250 OF 2019**

Manish Devendraprasad Yadav ...Applicant
(original accused No.4)

vs.

Dadra and Nagar Haveli
Administration ...Respondent

**ALONG WITH
CRIMINAL APPLICATION NO.171 OF 2019
IN
CRIMINAL APPEAL NO.251 OF 2019**

Jitendrakumar Karansingh Yadav ...Applicant
(original accused No.3)

vs.

Dadra and Nagar Haveli
Administration ...Respondent

**ALONG WITH
CRIMINAL APPLICATION NO. 173 OF 2019
IN
CRIMINAL APPEAL NO. 253 OF 2019**

Arsh Mohammad Lal Mohammad ...Applicant
(original accused No.2)

vs.

Dadra and Nagar Haveli
Administration ...Respondent

**ALONG WITH
CRIMINAL APPLICATION NO.167 OF 2019
IN
CRIMINAL APPEAL NO. 261 OF 2019**

Sugriv @ Seetu Gyanprakash Yadav ...Applicant
(original accused No.5)

vs.

Dadra and Nagar Haveli
Administration ...Respondent

Mr.Ghanshyam Upadhyay for the Applicants in all the applications
Mr.H.S.Venegaonkar for the respondent in all the applications.

**CORAM : RANJIT MORE AND SURENDRA P.TAVADE, JJ.
DATE ON WHICH JUDGMENT IS RESERVED : JANUARY 21, 2020.
DATE ON WHICH JUDGMENT IS PRONOUNCED: FEBRUARY 12, 2020**

(PER : S.P.TAVADE,J.)

1 By these applications the applicants are praying for

suspension of sentence imposed by Judgment and Order dated 26th October 2018 passed by the learned Sessions Judge, Silvassa convicting them for the offence punishable under 302 read with section 120-B of the Indian Penal Code in Sessions Case No.15 of 2012 and for grant of bail. As all the aforesaid appeals arise out of the impugned Judgment and order dated 26th October 2018 passed in Sessions Case No.15 of 2012 wherein the appellants in these appeals are original accused Nos.1 to 5. Hence, the applications for grant of bail can be conveniently disposed of by a common Judgment and the applicants are hereinafter referred to with reference to their original status in the Sessions Case.

2 The entire case of the prosecution rests on circumstantial evidence. The Trial Court relied upon following points:

- (1) Motive
- (2) Theory of contract killing
- (3) The appellants last seen in the area where the incident had occurred.
- (4) CDR
- (5) Memorandum of Statements

3 The prosecution has come with a story that Original accused No.1 in Appeal No.252 of 2019 had illicit relations with the wife of deceased since long. Both of them were having intimacy through the telephone calls. To prove the said fact, the prosecution has relied upon evidence of daughter of deceased-Vishakha (P.W.NO.4). She has categorically stated that her father was working at Allahabad and at that time original accused No.1 was also working at Allahabad. Accused No.1 was her neighbour. Original accused No.1 used to call her mother and

used to talk with her mother and therefore, there were quarrels between the wife of the original accused No.1 and her mother. There used to be frequent quarrels like fighting between the mother of Vishakha and wife of original accused No.1. Thereafter, her father (deceased) transferred to Nagpur and thereafter, he came to be transferred at Silvassa. In June 2011 one lady called up on our home telephone number and She gave one telephone number to my mother and asked her to make a call. The said number of was of appellant No.1. When my father asked accused No.1 why he was disturbing family life, accused No.1 threatened to kill her father prior to the incident. The said evidence is corroborated by the evidence of Kalpesh Harisinh Solanki (P.W.no.7) who deposed that when he was serving at Allahabad, he had heard about extra marital relations of the accused No.1 with the wife of deceased. He admitted in the cross examination that cannot give the name of any person who gave him such information but according to him, there was rumour in the colony where the deceased was residing. He was also residing in the same colony. Therefore, it can be said that the prosecution has established that there was motive of the accused No.1 to kill the deceased.

4 It is the case of the prosecution tha original accused No.1 had hired killers for killing the deceased on payment of Rs.40,000/-. Admittedly, original accused No.1 was serving at Noida at the relevant time. He was working with Bajaj Hindustan Limited. The Investigating Officer has seized cell phone from the possession of the said original accused No.1 bearing No.9711991600. To prove the payment of contract killing, the prosecution has relied upon evidence of Bank Officer Shri Jayshankar Ambikanarayanan who deposed that he was serving as

Branch Manager in State Bank of India, Saharanpur (UP). According to him, his branch is having A/c.No.31449513842 of Mr.Jitradrasing i.e. original accused No.3. At the time of opening the said account the original accused No.1 was residing at Bajaj Hindustan Limited, Unique Distillery, Gangnoli, District Sarangpur and he gave his residential address as Village Nagala, Tajpal Dundla, Firozabad, U.P. He has produced on record certified copy of statement of account (Exh.135). It has come in his evidence that on 27th August 2011, an amount of Rs.10,000/- was deposited in the account of original accused No.3. The said amount was deposited by Vivek K. Srivastav (original accused No.1). He produced on record a certified copy of pay in slip dated 27.8.2011 (Exh.136) upon which mobile No.9711991600 was mentioned which was of original accused No.1. He further deposed that on 26th November 2011 an amount of Rs.10,000/- was deposited in the name of original accused No.3 by pay in slip (Exh.137). He deposed that on 1st December 2011 an amount of Rs.10,000/- was deposited by pay in slip (Exh.139). All these amounts were deposited by original accused No.1 Vivek Srivastav. By the said evidence, it is established that Vivek K. Srivastav (original accused No.1) had deposited an amount of Rs.40,000/- in the account of original accused No.3 prior to the incident as well as after the incident. During the said period, original accused No.3 was in Silvassa, at a part of Gujarat. He used to verify his account whether the amount was deposited in his account. The said fact is disclosed from the call record of the original accused No.3. So it can be said that Vivek K. Srivastav (original accused No.1) had deposited Rs.40,000/- in the account of original accused No.3. The original accused No.1 has not explained why he deposited Rs.40,000/- in the account of original accused No.3 just

prior to the incident and thereafter. It was incumbent upon the original accused No.1 to explain the said payment and cause for the said payment which is not explained by him.

5 As far as original accused Nos.2 to 5 are concerned, they were in the same area prior to the incident. It is the case of the prosecution that original accused Nos.2 to 5 had come Silvassa prior to the incident and thereafter, they went to Gujarat and thereafter, their respective native places. The said fact is established from the call record of the original accused Nos.2 to 5. Original accused Nos.4 and 5 were arrested by the Investigating Officer. Mobile Nos.8057788316 from original accused No.4 and cell phone No.9045132794 were seized from original accused No.5. We have already observed that accused No.1 was having telephone No.9711991606 was seized from the possession of original accused No.1. The prosecution has also extracted CDR of above telephone numbers which show that original accused No.1 was constantly in touch with original accused Nos.4 and 5. The said call details are from 1st November 2011 to 30th November 2011. During the said period original accused No.1 used to talk with original accused Nos.4 and 5. CDR of original accused No.1 also shows that he was in contact with them on cell Nos.8057788316, 8445269532 and 7599085282. The above three telephone numbers were in possession of original accused Nos.2, 3 and 5. CDR also shows that above cell numbers were having location at Kharadpada, District Silvassa. To establish the presence of original accused Nos.2 to 5 in the vicinity of the incident the prosecution has relied upon CDR. The prosecution has examined Shri Zahid Khan, Assistant Nodal Officer of Tata Tele Service as PW.No.25, Shri Bhavik

Arvind Joshi, Nodal Officer of Idea Cellular Ltd, Region Ahmedabad as P.W.no.26, Shri Ganesh Ramrao Pawar, Nodal Officer of Bharati Airtel Ltd. As P.W.no.27, Mr.Tejus Mahesh Patel, Nodal Officer of Vodafone, Gujrat Region as P.W.no.31, Mr.Sarov Gurmit Singh Nodal Officer of Uninor Company, Gujarat as PW.No.32. They have produced on record CDR of cell phones used by the accused Nos.2 to 5. On going through the CDR, it is established that prior to incident and on the day of incident tower location of the cell phones of original accused Nos.2 to 5 was showing Kharadpada, District Silvassa. After the incident, their location was changed to Gujarat. It is also established from the CDR of cell phone of original accused No.1, he was in constant touch with original accused Nos.2 to 5. The said fact is also established from the CDR. Therefore, it can be said that there was conspiracy between the accused No.1 and accused Nos.2 to 5 to execute the plan of killing of deceased Vinod Mishra .

6 The prosecution has also relied on the memorandum of Statement of panch witness to the said memorandum of statement Ravji Ratna Gavit (P.W.No.5). He stated that the weapons of assault viz Pistol used in the crime was thrown in the river. He took police party to the said place but the water level of the river was very high. Therefore, police could not seize the weapon. From the said statement, the conduct of P.W.No.5 can be determined that he knew the place where the weapon of assault was thrown but it could not be recovered due to deep water. Original accused Nos.2 to 5 have also shown the place where they had stayed at a place prior to the incident and thereafter. Accordingly, prosecution has recorded the statements of witnesses in the said hotel or

guest house viz.Mohahmed of Jain International, Ram Prajapati, Manager of Rain Baserra Guest House, Bharat Kantibhai Chauhan-owner of Janata Guest House (PW..No.21), Mr.Sujit Kumar-owner of G.M.Guest House at Vapi Char Rasta (PW.no.28). From the evidence of the said witnesses it is established that original accused Nos.2 to 5 stayed in the said Guest House after the incident.

7 From the CDR of the cell numbers of the accused persons it is established that they were in touch of each other prior to the incident. Therefore, it can be said that there was well planned conspiracy to kill the deceased.

8 The prosecution has proved the chain of circumstances against the applicants in aforesaid crime. Therefore, involvement of the applicants in the crime is established. This is not a fit case to grant bail to the applicants in these applications. Hence, all the aforesaid applications for grant of bail are rejected.

9 It is made clear that the above observations are only prima facie observations. Observations made hereinabove are made for the limited purpose of disposing of these applications. The appeals shall be decided on its own merits, uninfluenced by the observations made hereinabove. All points and contentions of the respective parties are kept open.

[SURENDRA P.TAVADE, J.]

[RANJIT MORE, J.]