

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 369 OF 2019**

Sujit Manohar Nalawade

.....Applicant

Vs.

The State of Maharashtra

.....Respondent

WITH**CRIMINAL APPLICATION NO. 252 OF 2019****IN****CRIMINAL BAIL APPLICATION NO. 369 OF 2019**

Shri. Kunal Dinkar Patil

.....Applicant/Intervenor

IN THE MATTER BETWEEN-

Sujit Manohar Nalawade

.....Applicant

Vs.

The State of Maharashtra

.....Respondent

Mr. Rajiv Patil, Senior Advocate i/by R.D. Suryawanshi for Applicant.

Mr. M.S. Mohite i/by Sachin Thorat for the intervenor in APPP No. 252 of 2019.

Mr. A.R. Kapadnis APP for Respondent-State.

CORAM : A.S.GADKARI, J.**DATE : 11th FEBRUARY 2020.****P.C.:-**

This is an Application under Section 439 of the Code of Criminal Procedure for bail in C.R. No.I-707 of 2017 dated 22nd December, 2017 registered with Manpada Police Station, Dombivli, District- Thane under Sections 120-B and 115 of Indian Penal Code and under Sections 3 and 25 of the Indian Arms Act.

2 Heard Mr. Rajiv Patil, learned Senior Counsel for Applicant, Mr. M.S. Mohite, learned counsel for the Intervenor in Criminal Application No. 252 of 2019 and Mr. A.R. Kapadnis, learned APP for the Respondent-State. Perused the charge-sheet and the Affidavit dated 20th June, 2019 of Mr. Rajkumar V. Kothmire, the Investigating Officer and the other reports.

3 The first information report is lodged by Mr. Vyankat R. Andhale, Police Inspector attached to Local Crime Branch (L.C.B.), Thane (Rural).

It is stated in the said report that, under the directions of the Superintendent of Police, Thane (Rural), the said L.C.B. conducts parallel investigation in serious offences. On 22nd July 2017, unknown persons after firing on a Borello Car which was carrying cash belonging to Diamond Wine Shop, caused injuries to its occupants and tried to commit robbery of the said cash at Wada-Bhiwandi road within the jurisdiction of Ganeshpuri Police Station, Thane (Rural). A Crime bearing No.208 of 2017 under Sections 395 and 397 of the Indian Penal Code and under Sections 3 and 25(c) of Indian Arms Act has been registered in that behalf. That, again on 22nd October 2017, unknown persons at the point of pistol/fire-arm committed robbery of a bag containing cash of rupees one lakh belonging to M/s. Pooja Traders of village Ambadi and therefore, a crime bearing No.236 of 2017 under section 394 of the Indian penal Code and under Sections 3 and 25 of Arms Act has been registered with Ganeshpuri Police Station, Thane (Rural).

It is stated that, when the parallel investigation of the said two crimes was being conducted, after technical analysis of various facts involved in the said crimes, names of five accused persons namely (I) Kailash P. Ghodwinde, (ii) Dilip S. Kanojia, (iii) Raju N. Shetty, (iv) Kasim Ansari and (v) Vijay Menbansi were revealed and therefore the said accused persons were arrested in CR No.208 of 2017 on 13th December, 2017. During the course of the custodial interrogation of the said accused in CR No.208 of 2017, accused Vijay Menbansi disclosed that, in the month of February 2017, the principal accused herein Mahesh Patil in his Office situated at village Sagarli, Dombivli (East) in presence of the Applicant and the co-accused namely Vijay @ Valya Bakade, bodyguard of the principal accused, gave a contract of Rs.50.00 lakhs to him to kill the intervenor-Mr. Kunal Patil, who is also a sitting Corporator of the Kalyan-Dombivli Municipal Corporation. That, the Applicant herein i.e. the friend of the principal accused Mahesh Patil for and on behalf of principal accused Mahesh Patil, from time to time gave Rs.10.00 lakhs to the said Vijay Menbansi. The co-accused Vijay Menbansi thereafter gathered his friends namely Rajesh Patel and Rahulsingh @ Bhausahab from the State of Utttar Pradesh and paid them Rs.80,000/- and Rs.60,000/- respectively in advance for committing murder of Kunal Patil. The co-accused Vijay Menbansi asked them to make preparation by procuring fire-arms and cartridges for committing murder of Kunal Patil. However, the said Rajesh Patel and Rahulsingh could not complete the job given to them by Vijay

Menbansi.

That, co-accused Vijay Menbansi thereafter on 29th November, 2017 gathered all co-accused at an open space near Thakurli and informed them about the prospective commission of murder of Kunal Patil. The accused persons were having country made fire-arms along with cartridges. The accused persons kept watch on the movements of Kunal Patil from their two and four wheeler vehicles, however, could not get an opportunity to execute their plan. That on 30th November, 2017 and subsequent thereto also the accused persons tried to commit murder of Kunal Patil, however, they could not succeed.

It is lastly stated that, the principal accused Mahesh Patil with his friend i.e. the Applicant herein along with his body guard Vijay Bakade hatched a conspiracy to commit murder of Kunal Patil and gave contract of Rs.50.00 lakhs to co-accused Vijay Menbansi in the office of the principal Accused. However, as the principal Accused and other accused could not get appropriate opportunity, the plan of committing murder of Mr. Kunal Patil could not be executed. In the premise, the first information report is lodged.

4 Mr. Patil, learned Senior Counsel appearing for the Applicant submitted that, the statements given by the alleged eye-witnesses to the conspiracy, are based on information and are recorded belatedly i.e. after the arrest of the Applicant. He submitted that, the said witnesses heard the conversation between the principal accused namely Mahesh Patil, the Applicant

and Vijay @ Valya Bakade on one hand and Vijay Menbansi, the person who had been given contract to eliminate Mr. Kunal Patil, in the months of February or March, 2017, however, they did not disclose the said fact to the police immediately, which creates doubt about the authenticity of the said statements. He submitted that, the statement of Mr. Kunal Patil (prospective victim) prior to arrest of co-accused in the crime was also not recorded. That, the Applicant herein did not actually participate in pointing the office of Mr. Kunal Patil. He submitted that, after the arrest of the Applicant on 19th January, 2018, the said five alleged eye-witnesses have given their statements or rather their statements have been recorded by the police belatedly. He submitted that, apart from political enmity, the main purpose for giving the contract to eliminate Kunal Patil was that, he is an eye-witness in Sessions Case No. 150 of 2007 arising out of C.R. No. 97 of 2007 registered with Manpada Police Station, Dombivli and that, he should not depose in the Court against them. He submitted that, the evidence of the said witness namely Kunal Patil (PW No. 8) has been recorded by the Trial Court on 18th January, 2017 and therefore, as of today there is no fear of he being eliminated by the Applicant or principal accused Mahesh Patil. He submitted that, apart from the statements of the said alleged five eye-witnesses that they heard hatching of conspiracy by the Applicant, principal Accused and Vijay @ Valya Bakade with Vijay Menbansi, there is no material in the charge-sheet to show any other overt act by the Applicant.

He submitted that, the Applicant is in prison for last more than two years and if he released on bail, will obey all the conditions as may be imposed by this Court. He, therefore, prayed that, the Applicant may be released on bail.

5 Mr. Mohite, learned counsel for the intervenor-Mr. Kunal Patil, vehemently opposed the Application. He submitted that, Kunal Patil is an eye-witness in crime under Section 302 of the Indian Penal Code committed by Mahesh Patil and other accused persons therein. The trial of the said case i.e. Sessions Case No. 150 of 2007 arising out of C.R. No. 97 of 2007 registered with Manpada Police Station, Dombivli, is in progress. He submitted that, it is the reason that, the Applicant herein along with Mahesh Patil and other accused persons conspired to eliminate Kunal Patil, so that the chances of conviction of Mahesh Patil and other accused persons in the said Sessions trial would become blink. Mr. Mohite, also relied on the representation dated 29th June, 2017 submitted by the Intervenor-Mr. Kunal Patil with the Commissioner of Police, Thane and the antecedents at the discredit of the Applicant. Mr. Mohite therefore, prayed that, the Bail Application of the Applicant may be rejected.

6 Mr. Kapadnis, learned APP pointed out statements of the witnesses and other crucial aspects of the present case which have been revealed during the course of investigation and part of charge-sheet. Learned APP submitted that, the Investigating Officer Mr. Rajkumar V. Kothmire, has filed an Affidavit dated 20th June, 2019 placing on record the antecedents at the discredit of the Applicant

herein. He, on instructions from the Investigating Officer submitted that, it is the apprehension of the prosecution agency that, if the Applicant is released on bail, there is every possibility that, the Applicant will take a revenge and the life of Kunal Patil may be in jeopardy. He therefore, prayed that, the present Application may be rejected.

7 The facts giving rise for lodging the present crime and as reflected from the First Information Report have been briefly stated in the foregoing paragraph No.3 and repetition of the same is hereby avoided.

There are five eye-witnesses, who have in unequivocal terms stated the conspiracy hatched by the Applicant and principal Accused Mahesh Patil in the office of Mahesh Patil with Vijay Menbansi. The said witnesses have stated that, the Applicant and other accused persons are facing various criminal cases and they have spread terror in the vicinity of the city of Dombivli.

The evidence available on record in the form of statements of eye-witnesses reveals that, the Applicant, along with principal accused Mahesh Patil and co-accused Vijay Menbansi had conspired to eliminate the intervenor-Mr. Kunal Patil. The Applicant along with other accused persons used to discuss with Vijay Menbansi in the office of principal Accused Mahesh Patil about the said conspiracy. The record further indicates that, the co-accused Vijay Menbansi with the help of other three accused persons, tried to commit murder of Kunal Patil, however, they could not succeed in executing their plan and therefore, the

intervenor-Kunal Patil was saved. The record further indicates that, the Applicant, Vijay Menbansi and Vijay @ Valya Bakade were constantly in touch with each other.

Mr. Kunal Patil, in his statement to the Police has stated that, on 10th April, 2017 his cousin brother was brutally murdered by principal accused Mahesh Patil, co-accused Sunil Bhoir and Anil Bhoir alongwith other accused persons in the Gram Panchayat Office at Golavali villge. That, his cousin brother Vijay Wandar Patil was a member of Gram Panchayat and when he was siting in the office of Gram Panchayat for official work, the principal accused herein i.e. Mahesh Patil along with co-accused Sunil Bhoir, Arun Bhoir, Vijay @ Valya Bakade and other accused persons committed his murder by firing from a revolver and with swords and choppers. A crime bearing CR No. 97 of 2007 under sections 148, 149, 307, 302 of Indian Penal Code and under sections 3, 25(1)(a) 27 of Arms Act, has been registered against the principal accused herein and other accused persons.

8 After investigation, the said case has now culminated into Sessions Case No. 150 of 2007 and is pending on the file of Additional Sessions Judge, Kalyan for its final adjudication. The intervenor-Mr. Kunal Patil is the eye witness in the said crime. The said Kunal Patil has expressed his apprehension that, if the Applicant is released on bail, his life will be again put in danger by the Applicant and co-accused.

Another witness Dr. Wandar Patil, father of deceased Vijay Wandar Patil has also corroborated the version of Kunal Patil.

Perusal of the statements of witnesses would clearly indicate that, there is sufficient material available on record to show clear complicity of the Applicant in the present crime.

9 The record further indicates that, on 2nd November, 2019 at about 7.30 p.m. two unidentified persons threatened Mr. Sunil Suryavanshi, a witness to the present crime with dire consequences, if he gives evidence against the present Applicant in Court. A non-cognizable offence bearing No. 3102 of 2019 dated 3rd November, 2019 has been registered with Manpada Police Station, Dombivli, District Thane.

At the cost of repetition, it is to be noted here that, Kunal Patil is the eye-witness to the said crime. Deceased Vijay Wandar Patil, was the cousin brother of said Kunal Patil. As per the allegations made by the prosecution against the Applicant and co-accused in the present case, with a view to eliminate the said Mr. Kunal Patil, the Applicant, principal Accused- Mahesh Patil and co-accused Vijay @ Valya Bakade gave contract of Rs.50 lakhs to Vijay Menbansi.

10 As stated earlier, the Investigating Officer has filed an affidavit dated 20th June, 2019 and it is stated that, the Applicant herein has following antecedents-

Sr. No.	Police Station	C.R. No. & Sections	Status
1	Vishnunagar Police Station, Thane	I-139/2008 134, 147, 148, 149, 326, 324, 323, 504, 506(2) of IPC	Court Case No. 583/2008 Bail
2	Vishnunagar Police Station, Thane	I-192/2010 143, 147, 149, 324, 504, 506, 353 of IPC	Court Case No. 61/2011 Acquitted
3	Manpada Police Station, Thane	208/2012 420, 467, 468, 471, 34 of IPC	Court Case No. 461/2012 Bail
4	Vishnunagar Police Station, Thane	Cr. P.C. 110(E)(G), 07.12.2012	Preventive Action taken.

Mr. Patil, submitted that, the Applicant has been acquitted from the case at Serial No.2 mentioned above.

11 The Supreme Court in the case of *Neeru Yadav Vs. State of Uttar Pradesh & Anr*, reported in (2016) 15 SCC 422 in para-15 has held as under:

“15 This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not

in a whimsical manner.”

12 There is another facet to the present case. As noted above, the Sessions Case No. 150 of 2007 arising out of C.R. No. 97 of 2007 registered with Manpada Police Station, Dombivli is in progress. As the said Sessions Case No. 150 of 2007 is pending on the file of the Additional Sessions Judge for more than 13 years and a grievance to that effect was made by the learned counsel appearing for the Intervenor, this Court by its Order dated 28th January, 2020, through the Registrar Judicial-I called for a report from the concerned learned Additional Sessions Judge, regarding pendency of the said case and its progress. The learned Additional Sessions Judge, accordingly submitted its report dated 6th February, 2020. In the said report, various reasons are enumerated for not completing the said Sessions Case for last about 13 years.

The report indicates that, on 7th July, 2009, charge has been framed in the said Sessions Case No. 150 of 2007. That, the charge was amended on 7th March, 2011 and certain Sections were added to the original charge. The recording of evidence of witnesses started on 7th March, 2011 and on 2nd December, 2019 evidence of P.W.13 has been recorded. It thus, appears that, in last about more than 8 years, evidence of only 13 witnesses has been recorded by the Trial Court.

13 In view thereof, the learned Additional Sessions Judge, Kalyan seized

of Sessions case No. 150 of 2007, arising out of C.R. No. 97 of 2007 registered with Manpada Police Station, Dombivli is hereby directed to complete the said trial within a period of six months from the date of receipt of the present Order, without seeking further extension in that behalf. Learned Additional Sessions Judge, Kalyan is also requested to conduct the said trial on day-to-day basis, with a view to meet the ends of justice.

14 In view of the above and after taking into consideration all the necessary and relevant aspects of the present case, including the clear complicity of the Applicant in the present crime and the antecedents at his discredit, serious allegations against the Applicant and gravity of the offence, this Court is of the considered view that, the Applicant does not deserve to be released on bail.

Application is accordingly rejected.

In view of rejection of Bail Application No. 369 of 2019, nothing survives in Criminal Application No. 252 of 2019 and the same is also disposed off.

Sanjiv S.
Mashalkar

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(A.S.GADKARI, J.)