

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

CRIMINAL BAIL APPLICATION NO.1381 OF 2019

Pratim @ Peter Balram Mukerjea
Age : 64 years, Occ.: Retired
Residing at 18, Marlow Building,
Sir Pochkanwala Road, Worli,
Mumbai – 400 030
Maharashtra, India

.... Applicant/
Original accused no.4

Vs.

1. Central Bureau of Investigation
S.C.-I, New Delhi

2. The State of Maharashtra Respondents

Mr.Shrikant Shivade,Senior Advocate i/by Mr. Amit Ghag for Applicant.
Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Sandesh D. Patil
i/by Mr. D.P. Singh for Respondent No.1-CBI.
Mrs. P.P. Shinde, APP for the State of Maharashtra.

Coram : NITIN W. SAMBRE, J.

Date : 6th February, 2020

P.C.:

1. On 19th November, 2015, the present applicant came to be arrested in C.R. No. 406/2015 (CBI RC-12(S)/2015/SC-1/New Delhi, for an offence punishable under Sections 364, 302, 307, 328, 201, 203, 420, 468 and 471 read with 120-B of the Indian Penal Code and Sections 3 and 35 of Indian Arms Act.

2. The earlier bail application of the present applicant-accused being Bail Application No. 1221 of 2016 was rejected by this Court on 16th November, 2016.

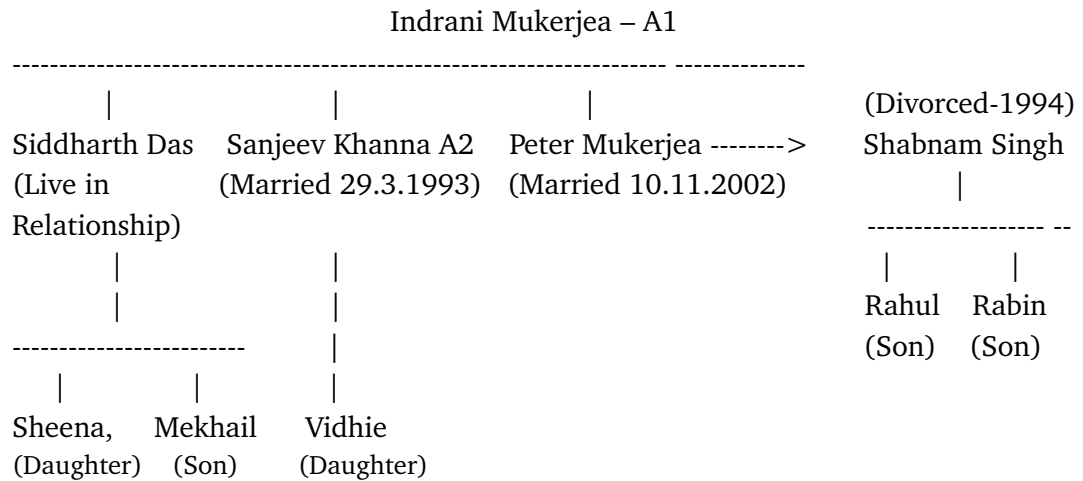
3. Subsequent to above, in C.B.I. Case No. 9/2016 arising out of above crime, Charge was framed against the applicant-accused and recording of evidence in the matter is in progress. I am informed that out of around 200 witnesses, depositions of around 61 witnesses are recorded till date. On 17th January, 2017, the Special Judge, C.B.I. Court framed charge against the present applicant under Sections 120B read with 364, 302, 307, 201, 203, 471 of Indian Penal Code. The details of the offences with which, the applicant is charged are as under :

Non-bailable with 120B	Criminal conspiracy to commit an offence punishable with death.
Bailable 201	Causing disappearance of evidence of offence
Bailable 203	Giving false information respecting of offence committed
Non bailable 302	Murder
Non bailable 307	Attempt to Murder
Non bailable 364	Kidnapping or abducting in order to murder
Bailable 471	Using as genuine a forged documents

4. Accused no.3 (Driver), Shyamwar Pinturam Rai, who has actually participated in the commission of crime in question, turned approver whose recording of evidence is already completed.

5. The rejection of the prayer for bail on earlier occasion by this Court on 16th November, 2016 was on the ground that there was evidence to infer that the applicant was in touch with accused no. 1 Indrani Mukerjea, through telephone, mobile and SMS. The statement of adopted daughter- Vidhie depicts that the applicant has disapproved love relationship between Sheena Bora and Rahul and accused no.3 overheard the conversation between accused nos. 1 and 4 on mobile about the approval of the spot at which crime was executed.

6. For understanding the interse relations between accused nos. 1 to 4, deceased Sheena daughter of accused No.1 Indrani Mukerjea, who was in love with Rahul son of the present applicant, following flow-chart will assist the Court.

I) FAMILY TREE :

7. To Accused No.1 – Indrani from relation with Siddharth Das daughter Sheena Bora was born on 11th February, 1987. Accused No.1 thereafter performed marriage with Accused No.2 – Sanjeev Khanna. and gave birth to daughter Vidhie. After divorcing him, she got married with the present applicant. Applicant thereafter adopted Vidhie, a daughter born from Sanjeev Khanna to Indrani.

8. Applicant prior to his marriage with Accused No.1 divorced Shabnam Singh out of which wedlock two sons viz Rahul and Rabin were born. It is the prosecution case that love relationship between Rahul, son of the Applicant and Sheena, a daughter of Accused No.1 was not acceptable to Accused No.1 – Indrani so also the present

Applicant. Accordingly, it is claimed that Accused No.1 to Accused No.4 hatched conspiracy so as to murder Sheena. It is further claimed by the prosecution that Accused No.1 – Indrani, Accused No.2 - her ex-husband Sanjeev Khanna, Accused No.3 – her driver Shyamwar Rai – approver, murdered Sheena and present Applicant even if was not physically present in India has conspired, resulting into registration of offence.

9. Learned Senior Advocate for the applicant, Mr. Shivade would urge that the statement of accused no.3, approver whose recording of evidence is already completed speaks of involvement of the applicant in the matter of hatching criminal conspiracy. According to him, in all five statements of accused no. 3 were recorded i.e. on 24th August, 2015 through investigating officer of Khar Police Station, on 6th September 2015 through the same officer, on 9th September 2015 through C.B.I. and on 6th November, 2015, statement recorded under Section 164 of Cr.PC. before the Magistrate.

10. The last statement of this accused dated 1st April, 2016 is sought to be relied on, wherein a specific mention is made about

applicant was in touch with the accused no.1, Indrani i.e. his wife and the applicant had approved the spot as was finalised by accused no. 1 with accused no.3 for execution of the offence.

11. As such the submission of Mr. Shivade is from the date of 1st statement for a period of almost eight months, there was no iota of evidence to infer that the applicant was involved in the crime, but for the statement. According to him, statement of accused no.3 which was recorded after a period of six months, raises only suspicion against the applicant. The story putforth in the last statement of accused is by way of after thought.

12. He would further claim that even if the prosecution story to the extent of non-acceptance of relationship between Rahul and Sheena is accepted, same cannot be stretched to the extent to infer that the applicant has connived with accused no.1 to 3, conspired and murdered Sheena. Learned counsel would further urge that there is no iota of evidence including that of reliable C.D.R. reports, failure to recover Sim from accused nos. 1 to 3 so as to infer the connection of the present

applicant in commission of crime in question based on the evidence of accused no.3. As such, according to him, the application needs to be allowed.

13. Mr. Shivade then would urge that the applicant has undergone bypass surgery at Asian Heart Institute, BKC and considering his age, (64 years), this Court should be considerate in grant of bail on medical ground also.

14. While countering the aforesaid submissions, Mr. Anil Singh, learned Additional Solicitor General appearing for the respondent would urge that there is no change in circumstance from the date of last rejection which warrants consideration of the prayer for grant of bail. He submits that Court should be sensitive to the stage at which trial has reached. According to him, the evidence of important witnesses viz. Rahul s/o applicant/accused etc., who is one of the important witness is yet to be recorded. As such, according to him, there is every likelihood that the applicant may tamper with the evidence of the witnesses. He would further urge that the exchange of

emails between the present applicant and his son, the other emails exchanged between deceased Sheena and witness-Rahul, prima facie demonstrates disapproval of relationship. He would also draw support from the evidence of the witnesses i.e. Deven Tripurari Sharan Bharti, Pradeep Narayan Waghmare-a domestic help and the evidence of son, Mekhail Upendra Kumar Bora in support of his contention of disapproval of relationship between Sheena and Rahul. According to Mr. Singh, the aforesaid material is sufficient enough to prima facie observe that in view of disapproval of relationship, the applicant has conspired, as such has participated in the commission of offences, as the intention of accused no. 1 and accused no.4 are same.

15. Considered rival submissions.
16. With the assistance of respective counsel, perused record.
17. The Court is required to take note of the fact that the applicant was arrested on 19th November, 2015 and the investigating agency till date has tendered in all three charge-sheets. It is also noted that in first four statements of accused no.3, (who has turned

approver), there is no reference to the involvement of the applicant in the crime, but for in the last statement recorded by the C.B.I. that too after the statement under Section 164 of Cr.P.C. recorded by the Magistrate about the conspiracy and the involvement of the applicant in the commission of crime. This Court is also sensitive to the fact that the recording of evidence of accused no.3 an approver is already over.

18. From the record, it depicts that from 24th August, 2015 to 1st April 2016, Investigating Agency recorded five statements of approver of which 4th one was under section 164 of Cr.P.C. before the Judicial Magistrate. In first four statements of approver – Accused No.3 has not attributed any role to the Applicant in commission of crime but for last statement recorded on 1st April, 2016. As such, it can be inferred that after a lapse of period of almost 7 months, approver has named the Applicant as one of the conspirators in commission of the offence in question. It is the prosecution case that Accused No.3 in his statement dated 1st April, 2016 stated that he overheard in mobile conversation between accused no.1 and applicant of approving spot of the commission of offence which is in Raigad District at Pen. As such, it

can be inferred from the aforesaid that the said 5th statement of Accused No.3 relied upon by the prosecution to oppose the prayer for bail was recorded at much belated stage i.e. after delay of about seven months.

19. Even if presuming that what has been stated by accused no.3, that the applicant while interaction on phone from U.K. has uttered viz. “Good Place”, “Well Done”, which the accused no.3 claimed to have overheard, it is difficult to accept and infer, the same was in context to the commission of the crime in question, as same does not appear to be in context to pre and post conspiracy conversation as nothing about the same is mentioned in the statement of accused no.3. It also raises a reasonable suspicion as to whether such conversation on phone between accused no.1 and accused no.4/applicant can be heard by accused no.3.

20. As far as the issue as regards the disapproval of love relationship by the applicant-accused between Sheena and his son Rahul is concerned, this Court has perused the exchange of emails

between Rahul and the present applicant, Rahul and Sheena etc. It cannot be inferred from reading of these emails that there was criminal intent on the part of the applicant beyond such disapproval of love relationship so to indulge into the act of execution of crime. Rather this Court from the language employed in the email exchanged between Rahul and the applicant infer that applicant being a responsible father tried to counsel his son Rahul.

21. Though Mr. Singh, learned Additional Solicitor General has urged that there is no change in circumstance, from the above discussion, it can be taken note of, that the trial in the matter has already commenced. Certain material which was not available on record, when the earlier bail application was rejected and the same is available for perusal viz. the CDR of accused no.3, the present applicant and that of accused no.1 etc., exchange of emails etc. which has prompted this Court to entertain this bail application. An appropriate support can be drawn on the maintainability of successive bail application from the judgment of Apex Court in the matter of Babu Singh and Others Vs. State of Uttar Pradesh, reported in (1978) 1 SCC,

page 579. The relevant observations read thus :

“2. Briefly we will state the facts pertinent to the present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this Court on September, 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over-turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.”

22. As far as the evidence that has been recorded till date of the witnesses is concerned, even if we presumed that the applicant has shown disapproval to love relationship, there is material to infer that such disapproval was based on the directions of accused no.1 and the material on record demonstrates that the disappearance of Sheena was even suppressed from the present applicant, as it is accused no.1, after

commission of crime of murder was operating email account and the mobile phone of deceased Sheena.

23. As far as the charge of conspiracy is concerned, the Apex Court while dealing with the requirement under Section 120B of Indian Penal Code in the matter of P.K. Narayan Vs. State of Kerala reported in (1995) (1) SCC page 142 has observed thus :

“10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must

be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion, it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation.”

24. The Apex Court in the aforesaid judgment have also observed that the motive and the preparation by themselves do not constitute conspiracy.

25. Apart from above, the law on the said issue is also considered by the Apex Court in the matter of State of Karnataka Vs. L. Muniswamy and Others, reported in (1977) 2 SCC, page 699, particularly paragraph 8, which reads thus :

“8. Let us then turn to the facts of the case to see, whether the High Court was justified in holding that the proceedings against the respondents ought to be

quashed in order to prevent abuse of the process of the court and in order to secure the ends of justice. We asked the State counsel time and again to point out any data or material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicated. A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever, skillfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is, that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. we have been taken through the statements recorded by the police during the course of investigation and the other material. The worst that can be said against the respondents on the basis thereof is that they used to meet one another frequently after the dismissal of

accused No.1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which no witness has said a word. In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed.”

26. In the backdrop of analysis of factual narration in light of above legal position, just because the applicant was in touch with or was in the company of accused no.1 before and after commission of crime in question, same at the most may give rise to suspicion of his involvement. However, that by itself is not sufficient enough to infer that the applicant is involved in the commission of offence. Absence of material on record to infer involvement of the applicant in the crime has prevailed before this Court to grant regular bail.

27. An offence of conspiracy cannot be deemed to be established on mere suspicion and surmises or inference which lacks the support of

cogent evidence. Just because the accused persons are related to each other, same will not result in presumption or is not sufficient to establish that the applicant conspired to commit murder, particularly in absence of any evidence as regards agreement between the applicant and other accused, who have committed the criminal act.

28. Even if trial in the matter has started, the Court is yet to complete recording of evidence of more than 100 witnesses and as such trial is likely to take substantial time. Of the sections under which the Applicant is charged, offences under Sections 201, 203 and 471 of IPC are bailable. As far as non-bailable offences under Sections 302, 307 and 364 of IPC are concerned, in the absence of any material/evidence on record to infer any agreement for commission of crime by the present Applicant with Accused No.1 to Accused No.3, submission of prosecution that Applicant is prima facie involved in the commission of offence in question is required to be rejected.

29. It is required to be noted that the applicant is behind bar for more than four years and recently he has undergone bypass surgery.

30. There are no criminal antecedents against the applicant and it is not the case of the prosecution that he is likely to flee from the justice.

31. If we appreciate the commission of offence in the crime in question in the backdrop of the offence under Section 120-B, accused no.3 has confessed to commission of crime and turned approver.

32. Accused no.1 alongwith her ex-husband accused no.2 and accused no.3 kidnapped Sheena and murdered her. There is no material on record to infer that there was any meeting in between the present applicant and accused nos. 1 to 3.

33. In the aforesaid background, in my opinion, the case of grant of bail is made out. Hence, the following order :

ORDER

(i) The applicant be released on bail in Crime No. 406 of 2015 (CBI RC-12(S)/2015/SC-1/New Delhi, for offences punishable under Sections 364, 328, 302, 201, 202, 203, 420, 461, 471 read with 120B

of the Indian Penal Code and Sections 3 and 35 of the Indian Arms Act, on furnishing P.R. bond in the sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with one or more local sureties in the like amount.

(ii) Since the applicant is an U.K. National, he shall surrender his Passport to the C.B.I. Court and shall not leave India without permission of the C.B.I. Court.

(iii) The Applicant shall inform his latest place of residence and contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the prosecution as well as C.B.I. Court, in writing.

(iv) The applicant shall not influence the prosecution witnesses or tamper with the evidence.

(v) The applicant shall regularly attend the trial and shall not seek any adjournment on whatsoever count.

(vi) The applicant in any case shall not meet or establish contact with the witnesses namely his adopted daughter Vidhie, son Rahul or Mekhail or any other witnesses till recording of evidence is over.

(vii) If there are two consecutive defaults in appearing before the trial Court or breach of any of the above conditions, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

(viii) The application stands allowed accordingly.

34. At this stage, Mr. Sandesh Patil holding for Additional Solicitor General, Mr. Anil Singh submits that the order granting bail be stayed for a period of eight weeks, which prayer is opposed by the learned counsel for the applicant on the ground that the applicant is already behind bar for more than four years.

35. In my opinion, it will be appropriate to stay the effect and operation of this order for a period of six weeks from today.

36. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(NITIN W. SAMBRE, J.)