

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 411 OF 2020

(Gurmeet Singh @ Babu Khokar ..vs.. State of Maharashtra, through PSO, PS Jaripatka, Nagpur and
another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P. Dharmadhikari, Senior Counsel assisted by Shri Uday Dable,
Counsel for the applicant,
Shri N.B. Jawade, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 30-09-2020

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant, who is arrayed as accused 2 in Crime 519/2019 registered with Jaripatka Police Station, Nagpur for offences punishable under Sections 364, 302, 201 and 120-B read with Section 34 of the Indian Penal Code and Section 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act), is seeking regular bail.

3. I have the learned Senior Counsel Shri S.P. Dharmadhikari for the applicant and the learned Additional Public Prosecutor Shri N.B. Jawade for the State, and with their able assistance, the charge-sheet placed on record in Criminal Application (BA) 313/2020,

which arises from the same crime, is scrutinized threadbare.

4. The gist of the prosecution case :

(i) Mrs. Parmindar Kaur lodged report with Jaripatka Police Station, Nagpur on 25-4-2019 that her husband Bhupendrasingh @ Bobby Makan is missing since 25-4-2019.

(ii) The gist of the report is that Bhupendrasingh, left home by his Innova Car bearing registration No. MH-31/CM-7979 at 12-30 p.m. on 25-4-2019, as was his day to day routine. Mrs. Parmindar Kaur spoke with her husband telephonically at 3-00 p.m. to enquire about his lunch and was told by her husband that he would not come home for lunch. Mrs. Parmindar Kaur called her husband again at 10-15 p.m. who informed that he was watching cricket match at the office and would come home after the match ends. Bhupendrasingh did not return home till midnight and when a concerned Mrs. Parmindar Kaur tried to call him on his cell phone, the cell phone was switched off. At 3.30 p.m. or thereabout, on 26-4-2019, Mrs. Parmindar Kaur came to know that her husband's car was parked near the Mangalwari Bazaar and, therefore, she lodged the missing report. It was on 28-4-2019 that Mrs. Parmindar Kaur and her brother Vidyut were informed by the police that a dead body was found within the jurisdictional limits of the Kondhali Police Station. Vidyut accompanied the police

to identify the dead body which body turned out to be of Bhupendrasingh.

(iii) Initially, Enquiry 11/2019 was registered under Section 174 of the Criminal Procedure Code. Mrs. Parmindar Kaur lodged report on 29-4-2019 that her husband was abducted, killed and his body was dumped at Kondhali to cause destruction of evidence. Pursuant to the report lodged by Mrs. Parmindar Kaur, Crime 519/2019 was registered for offences punishable under Sections 364, 302, 201 read with Section 34 of the Indian Penal Code.

(iv) Shailendrasingh @ Little Sardar, Harjitsingh, Manindarsingh and the applicant were arrested on 04-5-2019. The case of the prosecution is that during investigation, it transpired that the accused, pursuant to criminal conspiracy, murdered Bhupendrasingh. The accused were additionally charged for offence punishable under Section 120-B of the Indian Penal Code and subsequently the provisions of the MCOC Act were invoked.

(v) The prosecution theory as is discernible from the charge-sheet is that Bhupendrasingh was abducted in the night intervening 25-4-2019 and 26-4-2019 and was taken to the agricultural field of the applicant. Shailendrasingh @ Little Sardar and Harjitsingh returned to Nagpur. Harjitsingh purchased food and went back to the agricultural field of the applicant. Manjitsingh and the applicant were present at the agricultural field

alongwith the deceased. Harjitsingh conveyed the message of Shailendrasingh @ Little Sardar that Bhupendrasingh be eliminated. The applicant and Manjitsingh took Bhupendrasingh in Innova Car bearing registration MH-02/CR-7029 and killed him by strangulation and the dead body was kept under the bridge on river Bhadbhad.

5. The submissions of the learned Senior Counsel Shri S.P. Dharmadhikari can be summarised thus :

(i) The material in the charge-sheet is grossly insufficient to even *prima facie* suggest that Bhupendrasingh's death was homicidal. Learned Senior Counsel Shri S.P. Dharmadhikari invites my attention to the post-mortem report, which records that there is no evidence of any ligature mark or injury present over the neck surface and that on dissection of neck, the neck muscles, structures, bones and cartilage were found intact. The post-mortem report further records that there is no evidence or any gross surface injury or internal injury or fracture. The opinion as to the probable cause of death is reserved till the receipt of Chemical Analysis Report. Shri S.P. Dharmadhikari then took me through the communication dated 02-5-2019 addressed by the Investigating Officer to the Forensic Medicine Department of Government Medical College, Nagpur seeking answers to certain queries and the reply dated 03-5-2019 of the said department. Shri S.P.

Dharmadhikari also invited my attention to the expert opinion of Dr. Harish M. Pathak-the Professor and Head of Department of Forensic Medicine and Toxicology of KEM Hospital, Mumbai, which, inexplicably, refers to the alleged statements of two accused. The submission is, that the value and credibility of the said expert opinion is completely eroded since the opinion is apparently conditioned by a perception founded by the alleged statements of the accused.

(ii) Shri S.P. Dharmadhikari would submit that provisions of the MCOC Act, to the extent of the applicant, could not have been invoked and that there is no material whatsoever in the charge-sheet to indicate that the applicant was a member of the alleged organised crime syndicate headed by co-accused Shailendrasingh @ Little Sardar or that the applicant was associated with the co-accused in any unlawful activity muchless continuing unlawful activity within the meaning of Section 2(d) of the MCOC Act.

(iii) Shri S.P. Dharmadhikari would submit that there is no material in the charge-sheet whatsoever to link the applicant with the alleged crime. The submission is, that there is no material to suggest that the applicant was in the company of the co-accused or the deceased. The alleged recovery of iron rods is not an incriminating circumstance, since even according to the prosecution, no iron rod or any other weapon was used in the crime. Shri S.P. Dharmadhikari would submit that

the material which is pressed in service by the prosecution, and which unfortunately was considered by the learned Special Judge while rejecting bail, is not admissible in view of the provisions of Section 26 of the Indian Evidence Act. The reference is to a conversation between the applicant and a co-accused allegedly recorded while in police custody.

6. The learned Additional Public Prosecutor Shri N.B. Jawade would submit that while there is no eyewitness to the crime, the chain of circumstances is complete as would exclude the possibility of the innocence of the applicant. The material which according to Shri N.B. Jawade, cumulatively constitutes such chain of circumstances, is :

(i) The applicant and other co-accused bore a grudge against Bhupendrasingh. The accused perceived that Bhupendrasingh was instrumental in spreading a rumor that the applicant was responsible for the attempt made on the life of co-accused Shailendrasingh @ Little Sardar.

(ii) The phones of all the co-accused were switched off during the relevant period which is suggestive of a well planned and cold blooded conspiracy.

(iii) The two iron rods and the agricultural field where the deceased was detained were discovered at the behest of the applicant pursuant to Section 27 of the

Indian Evidence Act memorandum.

(iv) Hidden witness (HW) 72 has deposed that on 26-4-2019 a Sikh with long reddish white beard, aged 55 to 56 years, purchased four bottles of water and snacks and left by white Innova Car. Hidden Witness 74 has deposed that the accused bore a grudge against the deceased.

7. Shri N.B. Jawade has, with usual fairness, not seriously urged that the applicant can be roped in under the stringent provisions of the MCOC Act. *De hors* the fair approach, it is crystal clear that the provisions of the MCOC Act are, *prima facie*, not attracted at least to the extent of the applicant. I have not come across any material in the charge-sheet to suggest that the applicant was or is a member of the organised crime syndicate allegedly headed by co-accused Shailendrasingh @ Little Sardar. It is not even the case of the prosecution that the applicant was involved in any unlawful activity muchless continuing unlawful activity as a member of an organised crime syndicate. The applicant has not faced any prosecution, prior to the registration of the crime, alongwith any co-accused muchless a prosecution involving organised crime. In my considered view, in the teeth of the material in the charge-sheet, *prima facie* finding that the provisions of the MCOC Act are not attracted is inevitable, with the result that the bail application shall have to be considered *de hors* the

stringent provisions of Section 21(4) of the MCOC Act.

8. It is well settled that while considering grant or refusal of bail, minute or forensic examination of evidence is best avoided. A mini trial must be shunned. However, it is expected that while granting or refusing bail, reasons, however, brief, must be recorded. Recording of reasons is necessary to instil confidence in the stakeholders in administration of justice, who are entitled to know the thought process which is the edifice of the decision. Recording of reasons would also assist the superior Court to test the decision more effectively.

9. The learned Special Judge considered a recorded conversation allegedly between the applicant and the co-accused while in police custody. *Prima facie*, such consideration falls foul of the provisions of Section 26 of the Indian Evidence Act.

10. The alleged motive is too fragile a material to even *prima facie* link the applicant with the crime, particularly since there is no material in the charge-sheet to show that the applicant was in the company either of the deceased or of the co-accused during the relevant period. Assuming that the phones of all the accused were switched off that in itself, is again a material of suspect probative value to bring home a charge of conspiracy, in the absence of other cogent material.

11. The statement of HW 72 does not take the case of the prosecution any further. While the said witness expresses that he would be in a position to identify the Sikh person, who visited his establishment, admittedly there is no identification parade conducted. The statement of HW 72 is, therefore, not an incriminating material.

12. The statement of HW 74 also does not take the case of the prosecution any further and all that can be inferred is that the accused, for reasons different, bore a grudge against the deceased.

13. In my *prima facie*, albeit considered view, in the absence of cogent and admissible material in the charge-sheet to link the applicant with the alleged crime, the applicant is entitled to bail.

14. The application is allowed.

15. The applicant shall be released on bail on executing personal bond of Rs.50,000/- with a solvent surety of like amount.

16. Considering the prevailing circumstances, the surety may be furnished within four weeks of the release.

17. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

18. The applicant shall attend each date of hearing scrupulously.

19. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

adgokar