

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.84 OF 2020

Prakash Vilas Mane,
Age 42 years, Occupation Agri.,
R/o Jamkhed Tq. Jamkhed
Dist. Ahmednagar
At present in District Jail
Ahmednagar. ...Applicant

VERSUS

The State of Maharashtra,
Through the Police Station,
Jamkhed Dist. Ahmednagar. ...Respondent

.....
Advocate for Applicant : Mr. G. J. Kore
APP for Respondent : Mr. S. B. Narwade
.....

**WITH
BAIL APPLICATION NO.942 OF 2020**

Vijay @ Kaka Baban Garje Alias
Vijay @ Kakasaheb Baban Garje,
Age 25 years, Occupation Labourer,
R/o Telamgshi Tq. Jamkhed
Dist. Ahmednagar. ...Applicant

VERSUS

The State of Maharashtra,
Through the Police Inspector,
Jamkhed Police Station, Jamkhed
Tq. Jamkhed Dist. Ahmednagar. ...Respondent

.....
Advocate for Applicant : Mr. A. D. Ostwal
APP for Respondent : Mr. S. B. Narwade
Advocate for Assist to APP : Mr. N. V. Gaware
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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 22-01-2021.

ORDER :

1. Both the applications have been filed under Section 439 of Code of Criminal Procedure. Both the applicants have been arrested in connection with Crime No.75 of 2018, dated 29-04-2018, registered with Jamkhed Police Station, for the offences punishable under Section 302, 120(B), 143, 147, 148, 149 of Indian Penal Code and under Section 25/3, 27 of Arms Act.

2. Heard learned Advocates Mr. G. J. Kore and Mr. A. D. Ostwal for applicants in both the applications, learned Additional Public Prosecutor Mr. S. B. Narwade for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the investigation is over and charge-sheet has been filed, therefore, the physical custody of the present applicants is not required for the purpose of investigation. The applicants have been falsely implicated. Information has been filed by Krushna Ambadas Ralebhat, who is the brother of the deceased Yogesh. Yogesh was taking education in the third year of Bachelor of Science. He had

received the information around 18.44 hours of 28-04-2018 that Yogesh has been shot dead. So also one Rakesh Ralebhat has also received bullet injuries. Informant says that he had tried to talk to Yogesh but he did not talk, but when he made inquiry with Rakesh, at that time Rakesh had told him that accused Govind Datta Gaikwad and four to five persons along with him had hatched up conspiracy and came on motorcycle near us, they had rivalry from last one year on the count of some political board that was displayed, and then there is an attempt to kill them by shooting. Both the injured were initially taken to Rural Hospital and then was referred to civil Hospital, however they were taken to Maxcare Hospital, Ahmednagar where they declared as dead. Thus in the First Information Report the informant has not disclosed the name of both the applicants. In the supplementary statement, the informant has taken the name of the present applicants and it is stated that he received information from some eyewitnesses that the applicants were standing at a distance from the spot. Merely because some person is standing near the spot, that does not mean that he is part of conspiracy. The eye-witnesses have stated that one Govind Gaikwad and Akshay More were the persons who had shot from the pistols in their hands on Yogesh and Rakesh. In fact, witness Pravin

Jare is stated to have given that information to the informant, however in his own statement Pravin Jare has not stated the presence of the present applicants. Almost similar statements have been given by some other persons. Further connection has been tried to be stated by the prosecution in the statement of one Sonba More who says that he was in the same jym (Talim) of wrestling where the present applicants and other accused persons used to gather. He has stated that he had heard the accused persons stating that they want to eliminate Yogesh Ralebhat and one more person. He then says that due to fear he has not disclosed it to anybody. However, it is to be noted that the incident has taken place on 28-04-2018 and statement of Sonba has been recorded on 21-05-2018, there is huge delay. It is by way of improvement in order to show that there was a conspiracy. However, if we considered his statement recorded under Section 164 of Code of Criminal Procedure, he is not disclosing the names of the present applicants. Same is the case with another witness by name Mahesh Bhosle. It has been further submitted that some accused persons have been released on bail, and therefore, on the ground of parity also they deserve to be released on bail.

4. Learned Advocate appearing in Bail Application No.942 of 2020 has tried to rely on the Inquiry Committee Report dated 14-10-2019 which was formed after the application was filed by one Vinod Keshav Khade who is the cousin of the present applicant and it was stated in the said application that the present applicant i.e. Vijay @ Kaka Baban Garje Alias Vijay @ Kakasaheb Baban Garje, was not present at the spot, but he was in fact present in a marriage ceremony at a different place, and therefore, along with application he had produced CCTV Footage, photos and marriage invitation card. It is stated that after the inquiry by Sub-Divisional Officer, Karjat Division Karjat, it is stated that the present applicant was not present at the spot of the offence at the relevant time.

5. Learned Additional Public Prosecutor strongly opposed the application and submitted that the trial has begun. There is evidence against the present applicants, and therefore, the charge has been framed and under such circumstance now the applicants are not entitled to be released on bail.

6. At the outset, as regards plea of alibi that is tried to be taken by applicant Vijay @ Kaka Baban Garje Alias Vijay @ Kakasaheb

Baban Garje, it can be seen that the said report cannot be considered at all at the time of deciding bail application. The plea of alibi will have to be proved by the accused at the time of trial. In recent decision in *Prashat Dagajirao Patil v. Vaibhav @ Sonu Arun Pawar and Another*, [CRIMINAL APPEAL NOS.55-56 of 2021] [Special Leave Petition (Criminal) Nos.5038-5039 of 2020] Hon'ble Supreme Court has observed that,

"When only the limited issue of grant of regular bail to the accused is pending consideration before the High Court, it was not appropriate for it to pass the aforesaid directions which will have a direct bearing upon the trial."

Therefore, the said report cannot be considered at all.

7. As regards the merits of the case are concerned, it will not be out of place to mention here that report from the Trial Judge was called, and he has submitted that the trial has began, evidence of seven witness has been recorded in the sessions case till 07-11-2020. Thereafter, due to Diwali Vacations and the Judge himself was infected by COVID-19, the further evidence has not been recorded. No doubt, he has stated that the prosecution has cited list of 74 witnesses in the matter. Further the Hon'ble Apex Court has

also made the sessions case time bound. He has opined that the further five to six months time would be required to complete the trial. Thus, the Trial Judge is making efforts to decide the matter as expeditiously as possible. Further even the Hon'ble Supreme Court has made the trial time bound. The earlier bail application filed by applicant Prakash Vilas Mane was disposed of as withdrawn on 16-01-2019 which was after the disinclination was shown by this Court, and it was after filing of the charge-sheet. That means, this Court was not in favour of granting bail to the said applicants.

8. Further it can be seen from the evidence that is collected that charge has been framed by the competent Court and the trial has began. That means, there is prima facie evidence against the present applicants, and therefore, it will not be appropriate at this stage to opine that there is no case against the present applicants. Whether mere presence of the applicants would amount to conspiracy and what weightage should be given to the testimony of those witnesses who had seen and heard the applicants taking part in the conspiracy is concerned, it would be for the concerned Court to decide after those witnesses are examined. Therefore, taking into consideration all these aspects, no case is made out to exercise

discretion in favour of the applicants to release them on bail. Since the trial has been already expedited by Hon'ble Supreme Court, no necessity to give any further direction for expeditious hearing of the matter. Applications are therefore, disposed of as rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-