

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1438 OF 2020

Dipak @ Bhausahab s/o Baburao
Singar = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.SS Thombre, Advocate for Applicant;

Mr.SY Mahajan, APP for Respondent-State.

WITH

BAIL APPLICATION NO.1555 OF 2020

Rajendra @ Raju Nanasaheb Bhagwat = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.VD Sapkal, Sr. Counsel i/by Shri SR Sapkal, Adv.
for Applicant;

Mr.SY Mahajan, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 27th January, 2021.

PRONOUNCED ON : 10th FEBRUARY, 2021.

COURT'S ORDER:-

1. Both the applicants have been arrested in connection with CR No.88/2020 registered with Kopergaon Rural police station, District

Ahmednagar, for the offences punishable under Sections 302, 452, 143, 147, 148, 149, 120(B), 75 of IPC and Sections 3/25, 4/25, 7/25 and 27 of Indian Arms Act.

2. Applicant in Bail Application No. 1438/2020 is accused No.16 and applicant in Bail Application No.1555/2020 is accused No.15. The applicants have been arrested on 20.5.2020 and 5.7.2020 respectively and since then they are in custody. Charge sheet has been filed before the concerned Magistrate.

3. Heard learned Advocate Shri SS Thombre; learned Sr.Counsel Shri VD Sapkal, i/by Shri S.R.Sapkal; and learned APP Shri S.Y. Mahajan, appearing for respective parties.

4. It has been vehemently submitted on behalf of the applicants that, they have been falsely implicated in the alleged crime. The FIR has been lodged by one Shamrao Bhimrao Gire, who is father of deceased Suresh. It can be seen from the FIR itself that, deceased Suresh was himself a

criminal. It is stated that he had enmity with one Ravi Shete and his gang. There was quarrel between the deceased and Ravi Shete's group in 2010. There are offences against them with Kopargaon police station. It is further stated that one Bunt @ Viresh Punjahari Singar, who was friend of deceased Suresh, was murdered by Ravi Shete and his associates in 2012. Ravi Shete and his associates are still absconding, however, his brother Kiran Shete and one Pappu @ Santosh Dinkar Shete have been convicted in that matter and they have been sentenced to imprisonment for life. Thereafter the enmity between Suresh and Ravi Shete has gone worst. Ravi Shete had given threat that he would definitely kill Suresh. Suresh was externed in the year 2019. However, the order of externment was cancelled and, therefore, he had come to house on 16.3.2020. The FIR is very much clear that father had seen murder of his son and it is committed by Ravi Shete, Vijay Kharde and one unknown person by pistol and sickle-like weapon. It was submitted by both the applicants that their names not appearing in the FIR. No specific role is attributed to them in the FIR.

5. Learned Advocate Mr. Thombre appearing for the applicant in Bail Application No.1438/2020 submitted that the prosecution has come with a case that the applicant had kept watch on the activities of Suresh and had informed to Ravi Shete. The call details are tried to be produced on record, however, that will not sufficient to prove that whatever information was passed or given by him to Ravi Shete, would be regarding the whereabouts of Suresh even if we consider the case of the prosecution as it is. If we peruse the CDR report, it shows that three calls were made on 15.3.2020. However, in that respect, it is the say of the applicant that Ravi Shete had given threat calls to the applicant to withdraw or settle the matter with him else he would be murdered. The applicant is running a poultry-farm and he used to provide chickens and other material to one hotel, namely, Shivneri, which is run by accused – Ramdas Madhav Walte. There was financial transaction between them and on account of that, Ravi Shete had given him threats. The said evidence will not be sufficient to rope him as accused. It would take

long time to stand the trial and, therefore, the applicant deserves to be released on bail.

6. Learned Sr. Counsel representing the applicant in Bail Application No.1555/2020, submitted that the name of the present applicant is transpiring on the basis of the memorandum statement by accused No.1 – Ravi Shete. He has stated that he got three pistols and cartridges from the present applicant. In fact, the said statement of co-accused has no evidentiary value. There is no independent evidence against him. There appears to be some call details on record, which are taken place with accused No. 7 - Amol Mate. In fact, said Amol and the applicant jointly own tipper-dumper bearing No.MH-12 HB 3339, which they have put it for business purposes and in that connection, they are in contacts with each other. That will not be sufficient to rope him under Section 302 read with 120-B of IPC. There could not be intention on the part of the present applicant to eliminate Suresh. In fact, the learned Additional Sessions Judge has granted bail to other five accused persons in the same offence and,

therefore, on the ground of parity, the applicant is entitled to be released on bail.

7. Learned APP strongly opposed the applications and submitted that there were three calls between applicant – Dipak and accused No.1 – Ravi Shete on 15.3.2020. Further, between applicant – Dipak Singar and accused – Ramdas Walte, there were, in all, 26 calls between 1.3.2020 to 15.3.2020. Further, there were in all three calls on two mobile numbers of Amol Mate between applicant – Dipak Singar and Amol Mate on 11.3.2020 and 12.3.2020, which show that he was constantly in contact with the other accused persons, who were actively involved. Applicant – Dipak Singar had confirmed the fact that deceased Suresh has returned to home and then he had given that information to Ravi Shete and Ramdas Walte. He is operating from gang of Ravi Shete and, therefore, possibility of tampering with the evidence cannot be ruled out.

. Further, as regards applicant – Rajendra Bhagwat, learned APP would submit that on the basis of the discovery panchanama of Ravi Shete, three

country-made pistols and cartridges have been recovered from Ravi Shete; Nitin Awchite and Rakesh Kamble. He is the person, who had supplied the murder weapon to Ravi Shete. He was in contact with accused – Amol Mate; Sunil Nagwe and Ramdas Walte.

8. Learned APP has pointed out the following calls details, -

Sr. No	Accused Name with Mob.No.	Accused Name with Mob.No.	period	Total Calls
1)	Rajendra Nanasaheb Bhagwat Mob. 9011891106	Amol Sopanrao Mate Mob. 8421877771	06.03.2020 to 15.03.2020	In – 19 Out -10
2)	Rajendra Nanasaheb Bhagwat Mob. 9011891106	Sunil Pandharinath Nagwe Mob.8830209457	15.03.2020	Out - 01
3)	Rajendra Nanasaheb Bhagwat Mob. 9011891106	Amol Sopanrao Mate Mob.8888977305	01.03.2020 to 14.03.2020	In – 06 Out - 17
4)	Rajendra Nanasaheb Bhagwat Mob. 9011891106	Ramdas Madhav Walte Mob.9822859153	03.03.2020 to 16.03.2020	In - 01 Out - 04

9. Further, it has come in evidence that when main accused persons had halted at Shivneri hotel belonging to Ramdas Walte, at that place, criminal conspiracy has been hatched up. Present applicant had made arrangements for Ravi Shete and Vijay Kharde, who had fired the pistol shots on Suresh,

for their stay at Newasa phata Lodge at night time of 15.3.2020. Thereafter, arrangement of the vehicle has been made on 16.3.2020 for those accused persons to flee away.

10. Further, the applicant himself is also a history-sheeter and earlier, against him following offences have been registered, -

a) Wargaon police station, Aurangabad, CR No.116/2015 for the offences under Sections 307, 143, 147, 148 and 149 of IPC.;

b) Vaijapur police Station, Aurangabad, CR No.643/2017, for the offences under Sections 379 and 109 of IPC;

c) Vaijapur police station, Aurangabad, CR No.432/2017 for the offences under Section 3/25 of Arms Act;

d) Vaijapur police Station, Aurangabad, CR No.19/2017 for the offences under Sections 143, 147, 148, 149, 452, 427 and 504 of IPC;

e) Vaijapur police Station, Aurangabad, CR No.191/2019 for the offence under Sections 379 and 109 of IPC.

11. The learned APP further submitted that if both the applicants are released on bail, then possibility of tampering with the evidence cannot

be ruled out. So also, the entire gang would get activated and the possibility of some more crimes cannot be ruled out. Lastly, the learned APP prayed for dismissal of both the applications.

12. At the outset, it is to be noted that the investigation is over and charge sheet is filed. Therefore, it is required to be seen as to what evidence has been collected in the matter and whether any grounds are made to release the applicants on bail in any manner. It appears from the contents of the FIR that though father of the deceased is accepting that certain criminal cases are pending against deceased Suresh; yet the said antecedents will not *ipso facto* give benefit to the present applicants. The informant was specific in stating that Suresh was externed and had returned to the house only after the Order was cancelled. Unless there would have been the message passed on or given to the main assailants, informing that Suresh has returned back, accused Nos.1, 2 and other two unknown persons, would not have gone to village Bhojade. Therefore, the prosecution has come with a case that it was accused No.16, who was

providing the said material information to these persons and in order to establish connections, call details have been submitted. Now, as regards those call details are concerned, the explanation that is given by the accused, cannot be considered at the stage of bail, as that explanation is required to be given by him at the time of trial and the Trial Court would decide as to whether to accept the said defence or not, taking into consideration the evidence that is adduced. Therefore, the role that is attributed to accused No.16 is facilitator of the information about the arrival of deceased Suresh, which can be said to be an important information. Further, if we see the call details given by the prosecution, then it can be seen that there were, in all, 26 calls (13 incoming and 13 outgoing) between him and Ramdas Walte during the period 1.3.2020 to 15.3.2020, with whom, he says that he has some business relationship. But, then there are call details between accused No.1 and the applicant and accused No.7 and him. Therefore, this cannot be the case where discretion can be exercised in favour of the said applicant. Therefore, his application deserves to be rejected.

13. As regards the applicant in Bail Application No.1555/2020, though his name has been implicated on the basis of the memorandum under Section 27 of the Indian Evidence Act; yet it can be seen that it has led to the discovery of three country-made pistols. No doubt, at this stage, there appears to be no evidence on the point from where the present applicant had procured those country-made pistols; yet the call details, referred to above, would give some evidence. Though he is saying that five accused persons have been released on bail; yet the role attributed to each of the accused, appears to be different and this Court has rejected the bail application filed by accused No.6 – Ramdas Walte, i.e. Bail Application No.1084/2020 on 14.10.2020. Therefore, he cannot claim parity. He is giving reason regarding call details that Amol Mate has business transactions. However, as aforesaid, his call details with accused Sunil Nagwe and Ramdas Walte have also been pointed out. One more aspect that is required to be considered against the present applicant was that he was involved in five offences. It appears

that he has been released on bail in connection with CR No.19/2017 and 191/2019 registered with Vaijapur police station and he has not given further details about the other cases those are pending against him. That means, while on bail in some other offences, the allegations are that, he has taken part in commission of those crimes and, therefore, this aspect is also required to be considered. Therefore, as against this applicant also, no case is made out to grant discretionary relief in his favour.

14. In the result, both the bail applications stand rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV