

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.464 OF 2021

Praveen Kesharji Manka

.. Applicant

Versus

Union Territory of Daman and
Diu

.. Respondent

...

Mr. Ashok Mundargi with Ms.Neha Bhosale, Rohit Jadhav i/b
NDB Law for the applicant.

Mr. Saurabh Kshirsagar i/b H.S. Venegaonkar for the respondent
UOI.

Mr.S.S.Pednekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 6th SEPTEMBER 2021.

P.C:-

1 The applicant came to be arrested on 23rd October 2020 in connection with C.R.No.76 of 2020 registered with Nani Daman police station on 29th August 2020. The offence being registered on the complaint of one Dhruvin Mahyavanshi registered against unknown persons invoke Section 304 of the IPC, but on receipt of the post mortem report, Section 304 and 120-B of IPC is inserted. On completion of investigation, charge sheet no.61 of 2020 came to be filed on 28th November 2020 and

the name of the applicant featured as a key accused. His application filed before the Sessions Judge, Daman was rejected.

2 Heard learned Senior counsel Mr.Mundargi for the applicant and Mr.Venegaonkar for the respondent – Union Territory of Daman and Diu. Perused the charge-sheet placed on record which is filed against six accused persons.

 The applicant is named as Accused no.5. Two accused persons have been shown to be ‘Absconding’, and the charge-sheet also report seizure of one Bajaj Auto-rickshaw used in the commission of offence along with the blood samples collected from the said rickshaw.

 The detail charge-sheet presented in the Court of JMFC, Daman reveal that on 28th August 2020, information was received from an Ambulance attendant, about one person with serious injuries found lying in a rickshaw being parked on the main road, opposite Vatika Bar and Restaurant. The police personnel, on reaching the spot, found the person in a pool of blood and the driver of vehicle was standing near it. The rickshaw came to be seized and the auto-rickshaw driver was taken to the police station for interrogation. From the belongings of the person who was injured, he was found to be one Vinodbhai Mahyavanshi, aged 43 years, resident of Salvav, District Valsad, Gujarat. He had sustained multiple stab wounds, suggestive of being inflicted by sharp weapon. Since the complainant

approached the police station on 29th August 2020, he identified the body of the person, found to be of his father. He lodged a complaint reporting that some unknown persons had assaulted his father and inflicted grievous injuries on his body with sharp object and killed him.

3 The auto-rickshaw driver Rajendra Tiwari gave his statement and statement of his wife Sheetal Tiwari was recorded where she stated that Accused no.3 Vicky Sharma and Anuj Patel used to stay at their residence at 41, Star-2 Bldg, Char wada, Vapi, District Valsad. The investigating team recorded statements of owner, cook and waiter of K.K. Restaurant who divulged that on 28th August 2020, deceased Vinod along with Accused no.1 Rajendra had come to the restaurant to have food and the same is recorded in the CCTV footage. The investigation reveal that accused no.1 accompanied by the deceased, had visited the restaurant and the offence is committed after their visit to the restaurant. The DVR was seized after conducting the panchnama and on arrest of the accused no.1, the other accused persons were also found to be involved. Since shelter was given by Accused no.1 to Vicky Sharma (Accused no.3) and Anuj, the search of the premises was carried out in presence of panchas. This led to recovery of various documents of Manesh C. Mahyavanshi (Accused no.6), Vicky Sharma and Anuj Kumar Patel. Vicky Sharma (Accused no.3) and Divesh Nayka (Accused no.4) were

arrested by Maharashtra Police in some crime committed at Nallasopara and therefore, transfer warrant was sought and they came to be arrested in the present C.R. The investigation led to withdrawal of money from the bank by Accused nos.3 and 4 on 29th August 2020 and the CCTV footage of the Bank. This revealed the financial angle of the crime, and particularly, that of Accused no.6 Manesh Mahyavanshi.

During investigation, the name of the applicant surfaced and the conspiracy unearthed is to the effect that on the date of commission of the offence, Absconding accused Anuj Patel had visited the office of the applicant and received a sum of Rs.20,000/- for committing the offence and this statement came from the co-accused, alleging that the applicant is the main conspirator and financier behind the commission of crime. Further investigation led to the pending of proceedings with the Gujarat High Court where Kanti Magan Patel and Jayanti Magan had filed an application. The charge-sheet allege that the deceased Vinod had received less money from the present applicant in the deal of land and therefore, he was avoiding to attend the Court, and the applicant was apprehensive that the Court might rule against him in connection with the land survey no.78 and the applicant is attributed a motive of eliminating the deceased through accused no.6 Manesh. The charge-sheet allege that accused Anuj Patel as per directions of Accused no. and the applicant arranged other accused persons being Absconding

accused Shahrukh, accused Rajendra – rickshaw driver (A1), Vicky Naika, Vicky Sharma and Divesh Naika who gave effect to the conspiracy.

4 The charge-sheet compile several confessional statements of the co-accused which implicate the present applicant and the evidentiary value of the said statement, of course, is a matter of trial. Apart from this, the proceedings pending in the Gujarat High Court between the applicant on one hand and Jayantibhai Patel, Kantibhai Patel and Vinodbhai (deceased) are also placed on record, which clearly reveal that there was a land dispute existing between them. Further reading of the papers would reveal that land bearing Old Survey No. 78 (New Survey No.67) of Village Salvav, Taluka Vapi, District Valsad, is a subject matter of the dispute and one Bhavichbhai, Gadiyabhai had executed a Will on 10th December 2003 in favour of Jayantibhai and Kantibhai Patel and the property was bequeathed to them. The Dy. Collector of Valsad freed the said property from restrictions under Section 43 of Gujarat tenancy and Agricultural Land, 1948 by his order dated 23.5.2006 considering that the subject property is an old tenure land. Bhavichbhai expired leaving his heirs i.e. Vinod Bhavichbhai, Premiben Bhavichbhai and Geetaben Bhavichbhai. On the death of Bhavichbhai, an application was filed by Jayantibhai and Kantiben, seeking mutation of their names in record of right

under the pretext that the said land had devolved upon them, pursuant to which mutation entry was taken in the name of the said persons. The said entry was, however, reviewed by the Collector, suo-motu on the ground that subject matter land was a new tenure land, against which Petition was filed, challenging the said order. The proceedings placed on record would reveal the complication involved revolving around the said piece of land and the documents further reveal that the deceased had lodged a complaint in the year 2014 in Pardi police station against Kantibhai and Jayantibhai where he allege that his father – Bhavichbhai died in the year 2007, leaving behind his mother Premiben and one sister Geeta. He referred to an ancestral property in Salvav in the name of his mother, sister and his own self. He alleged that he came across a document in form of a sale deed which reflected the name of Kantibhai, Premiben, Geetaben and his own name as sellers of the property and the purchaser was shown as one Nisar Shaikh. The sale deed was executed with general Power of Attorney issued on 19th March 2008 and the photographs of his mother Premiben and sister Geeta was also affixed on it. He complained that he had not issued any such Power of Attorney and that was forged by Kantiben and Jayantibhai and property i.e. land no.78 was sold to Nisar Shaikh. He sought an inquiry into the whole episode. The statements of witnesses of Kantibhai and Geetaben compiled in the charge-sheet reveal that deceased had told them that he had received only

Rs.10 to 15 lakhs for the land Survey No.78 from Pravin and Manesh and deceased Vinod had joined hands with Kantiben and Jayantiben. This irked the applicant Pravin and Manesh. The material in the charge-sheet reveal that accused Pravin was in fear that he will lose the case being contested in the Gujarat High Court, and since Pravin has carried lot of construction on the said piece of land and was unable to convince deceased Vinod, therefore, it is alleged that the conspiracy was hatched to eliminate him to the statement of Jayantibhai recorded on 9th September 2020 where he narrates the entire transaction and state that he along with his brother Kantibhai had filed a case against Pravin in the High Court at Gandhi Nagar as well as Ahmedabad and the deceased was persuaded by both the brothers that since Bhavichbhai had given them the land by Will, they were the legal owners, but the deceased did not agree and lodged a complaint against him and other persons.

5 It is the applicant who had purchased the land from the deceased in 2014 by registered sale deed and it is alleged that the same piece of land was also sold to Jayanti Magan and Kanti Magan and who had already sold the same to three other persons. The statements of the co-accused lead to the conspiracy and the submission of the learned senior counsel that it is only these statements i.e. statement of Divesh, Rajendra and Vicky Sharma, who are the co-accused implicate him. The said submission may

not be correct as a motive attributed to the applicant in the charge-sheet has also surfaced on record through the statement of the sister of the deceased Smt.Geetaben who state that her brother had received less amount of the deal, whereas the sale deed placed on record at page 740 record the consideration as Rs.1,10,00,000/- and it record that the entire amount is received. The building was constructed on the said piece of land and even flats were sold by the applicant. Jayantibhai and Kantibhai had gone to the Court and the applicant wanted the support of the deceased but he was not supporting. Pertinent to note that land deal was effected through Manesh. Though it is argued that several Suits were filed by different persons to whom land was sold and the suits were withdrawn in favour of the applicant, ultimately what can be seen is the deceased had received only part payment and the charge-sheet referred to the motive and the connection of the present applicant by way of CDR.

6 Since the applicant is charged for conspiracy, the Police Sub-Inspector at Nani Daman police station has placed on record an affidavit which contain the examination report from the Central Forensic Science Laboratory where it establish that the applicant was in contact with Manesh and the details are placed on record along with the affidavit. Since it is difficult to find a direct evidence of conspiracy, in the wake of accusations faced by the applicant that he had a motive for hatching the conspiracy

and eliminating the deceased and the case against him is based on the surrounding circumstances which are compiled in the charge-sheet, his application deserve a rejection and it is accordingly rejected.

SMT. BHARATI DANGRE, J