

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.525 OF 2020

Avinash Pradeep Jadhav ... Applicant
 Versus
 State of Maharashtra ... Respondent

Ms. Gauri Velankar, appointed Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent-State.

Mr. Ganesh Ramdas Patil, Police Sub-Inspector, Baramati City Police Station, present.

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CORAM : N.J. JAMADAR, J.

DATE : 30 OCTOBER 2021

P.C. :

. This application for bail is received from Yerwada Central Prison, where the Applicant is lodged. By an order dated 31 July 2021, the Secretary, High Court Legal Services Committee, was directed to appoint an advocate to espouse the cause of the Applicant. Ms. Gauri Velankar, the advocate appointed by the High Court Legal Services Committee, has filed memo of application.

2 The Applicant has been arrested for the offences punishable under Sections 386, 387, 302 and 120B read with Section 34 of the Indian Penal Code, 1860 (Penal Code), along with the co-accused. The case of the Prosecution is that co-accused Dinesh Wayse, who was the employee of the Krishna Jadhav (the deceased) was inimically disposed towards the deceased. Dinesh Wayse and other accused were arrested for murder of one Rituraj Kale. It was the grievance of the said Dinesh and his associates that the deceased did not render assistance to them in securing bail. Dinesh Wayse and his associates, thus, had a grudge against the deceased, the husband of the first informant, Sapna.

3 On 9 November 2017, Dinesh Wayse and his associates had set on fire a sports utility vehicle (SUV) of the deceased. A person, namely, Amin Inamdar was arrested in connection with the said offence. The investigation therein revealed the complicity of Dinesh Wayse, Lokesh Mane and Ganesh Mane. Few days later, the deceased was abducted by Lokesh Mane and Sachin Jadhav to a place near the gym of Vinod Mane. At that time, Vinod Mane, Dinesh Wayse, Ganesh Mane, Anil Mane, Sunil Mane, Prem Wayse, Sandeep Mane, Ravi Makar, Sachin Jadhav, Gulab Mane and the Applicant - Avinash Jadhav demanded an amount of Rs.1,00,000/-, as a ransom, else the deceased would be killed. The latter, thus, paid the said amount

of Rs.1,00,000/-. However, Dinesh Wayse and his associates continued to harass the deceased and repeatedly made demand of money. Dinesh Wayse and his associates allegedly instigated a lady, to lodge a false FIR against the deceased for the offence of rape, and offences punishable under the Protection of Children from Sexual Offences Act (POCSO Act). Thereafter Dinesh Wayse and his associates demanded the deceased to pay Rs.30,00,000/- to withdraw the said prosecution, initiated by the said lady. The Applicant was allegedly one of the persons, who made the said demand. When the deceased refused to pay the said amount, those persons had threatened to kill the deceased.

4 On 5 November 2018, the deceased had gone to Baramati Hospital to see Prabhakar Pawar, his driver, who was admitted therein. The first informant was at home. A boy from the neighborhood informed the first informant that the deceased was assaulted near Baramati Hospital. The first informant rushed to the said spot and found the deceased lying in a pool of blood. The deceased was shifted to Silver Jubilee Hospital. However, he was declared dead. Thus, the first informant lodged report against Dinesh Wayse and twelve co-accused, including Avinash Jadhav, the Applicant.

5 The Applicant came to be arrested. The Applicant preferred

an application for bail before the Sessions Court, Pune. By an order dated 22 July 2021, the Additional Sessions Judge was persuaded to reject the application, primarily for the reason that the Applicant was arrested for the offence of criminal conspiracy to commit the murder of the deceased, though, admittedly, the Applicant was not one of the assailants.

6 I have heard Ms. Gauri Velankar, learned Advocate for the Applicant and Ms. Anamika Malhotra, learned APP for the State. With the assistance of learned Counsel for the parties, I have perused the material on record.

7 Ms. Velankar, learned Advocate for the Applicant would urge that there is no material to *prima facie* connect the Applicant with the crime. Indisputably, none of the prosecution witnesses has stated that the Applicant was one of the assailants. Though the provisions contained in Maharashtra Control of Organized Crime Act, 1999 (“MCOCA Act”) have been invoked against some of the co-accused, yet sanction to invoke those provisions against the Applicant has not been granted. In the face of such material, the Applicant deserves to be enlarged on bail, urged Ms. Velankar.

8 In contrast to this, learned APP for the State, resisted the

prayer for bail. It was urged that the deceased was done to death in prosecution of a well planned conspiracy. Since there can be no direct evidence of conspiracy, the mere fact that the Applicant was not the actual assailant, does not entitle the Applicant to be enlarged on bail, submitted the learned APP.

9 From the perusal of the FIR and statements of witnesses, especially, the statements of witnesses recorded under Section 164 of the Criminal Procedure Code, 1973, namely, Kedar Bharat Jadhav, Vijay Atmaram Pote, Prem Krishna Jadhav, son of the deceased, Bharat Mahadeo Jadhav, brother of the deceased, and Sapna Krishna Jadhav, the first informant, it becomes clear that the Applicant has not been named as an assailant. The role of actual assault has been attributed to three juveniles in conflict with law, apart from Vinod Mane and the hirelings of Mane.

10 As against the Applicant, the witnesses have alleged that he was present when the deceased was first abducted near the gym of Vinod Mane and a demand of ransom was made. Secondly, when the lady lodged a report against the deceased, falsely accusing him of sexual exploitation, the co-accused Dinesh Wayse and others again made a demand of Rs.30,00,000/- to withdraw the said prosecution. At that time, the Applicant was allegedly a member of the accused party, which made such a demand.

Apart from these two allegations, at this stage, there is no other material against the Applicant.

11 It is imperative to note that from the perusal of the material on record, one gets an impression that genesis of the dispute is also in the revenue to be shared in respect of illegal gambling (*matka*) business. It is alleged that a meeting was held by the members of the community, to which the deceased and Dinesh Wayse and others belonged, and there also the co-accused administered threat. The material on record qua the Applicant, thus does not transgress beyond the presence of the applicant with the co-accused, when the demand of money was allegedly made.

12 In the aforesaid backdrop, when the sanction has not been accorded to invoke provisions contained in MCOCA Act against the Applicant and no direct role of assault or demand is attributed to the Applicant, in my considered view, a *prima facie* case is made out to release the Applicant on bail. It would be contextually relevant to note that the co-accused Akshay Bhosle, against whom the allegations appear to be somewhat identical with that of the Applicant, has been released on bail by this court by an order dated 30 July 2021 in B.A. No.3465 of 2019.

13 The apprehension on the part of the prosecution about tampering with evidence and threatening the witnesses, can be taken care of by imposing appropriate conditions. Hence, the following order.

: O R D E R :

- (a) Bail Application stands allowed;
- (b) The Applicant be released on bail in C.R. No.779 of 2018 registered with Baramati City Police Station, on furnishing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (c) The Applicant shall not tamper with the prosecution evidence and/or threaten or induce the first informant and any other prosecution witness/es;
- (d) The Applicant shall report at Baramati City Police Station on the first Saturday of every month in between 11.00 a.m. to 01.00 p.m. to mark his presence;
- (e) The Applicant is permitted to furnish a cash security in the sum of Rs.25,000/- in lieu of surety for a period of eight weeks, within which the Applicant shall arrange surety;
- (f) Bail Application stands disposed of.

(N. J. JAMADAR, J.)