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investigation, charge-sheet bearing No.63 of 2018 came to be filed against five accused. Thereafter, four supplementary charge-sheets came to be filed by the prosecution and the name of the Applicant surfaced when the co-accused were arrested. On 15/12/2019, the present Applicant was also arrested, attributing him the role of a conspirator and, on 12/03/2020, the fifth charge-sheet was filed, where he was charge-sheeted. His Bail Applications filed before the Sessions Judge, Daman, came to be rejected and, therefore, he is before this court.

2. Heard Mr. Ponda, learned senior counsel appearing for the Applicant and Mr. Venegaonkar, learned counsel appearing for the Union Territory of Daman and Diu.

3. Mr. Ponda, learned senior counsel would advance his submission to the effect that though four charge-sheets came to be filed, the name of the Applicant did not surface during the investigation and he came to be arrested only after filing of the forth charge-sheet and his arrest is at a belated stage. His submission is that the Applicant is not assigned any role as an assailant nor he was present on the spot. Further, no motive is attributed to him for committing the double murder. The case against the Applicant, according to learned counsel, is based on circumstantial evidence, but in order to establish the same, the prosecution is duty bound to form the chain of circumstances, which is completely lacking in the charge-sheets. As regards the

close association of the Applicant with one Sukha Patel, which is the genesis of the criminal conspiracy, Mr. Ponda would submit that they both are in liquor business and, therefore, their proximity or connectivity should not be assumed as the one alleged to be in the form of criminal conspiracy. The submission is, the evidence compiled in the charge-sheet falls short of reflecting his *prima facie* involvement in the double murder, which took place on 01/04/2018 and, there is no material to connect him with the said murder or to involve him in the said crime as a co-conspirator. The multiple charge-sheets, according to learned counsel, which fail to establish the chain of circumstances, are incomplete and not compatible with the guilt of the accused and cannot be said to be completely incompatible with any hypothesis of the innocence of the accused.

4. Per contra, Mr. Venegaonkar, learned counsel for Respondent No.1, has pointed out the circumstances compiled in the charge-sheet against the present Applicant and, according to learned counsel, the entire material has been compiled and set out in the affidavit filed on behalf of the Respondent, through the Senior Police Inspector of Nani Daman Police Station on 24/06/2021. The chain of circumstances, according to learned counsel is established through the ample material available on record pointing out the involvement of the Applicant in a heinous offence of double murder. According to Mr. Venegaonkar, the charge-sheets contain material reflecting the

conspiracy hatched and the present Applicant along with other co-accused has conspired the commission of heinous offence and these are the persons dangerous to the society, if released on bail, the witnesses are likely to be deterred from spelling the truth during trial. By way of an instance, it is submitted that one of the co-accused Rashid Murtuza has given a confessional statement, which was relied upon by this court as well as the Apex Court while rejecting the application of the co-accused. When Rashid Murtuza was detained in prison, he was pressurized by the co-accused to withdraw the confessional statement and when he refused to withdraw the same, a fabricated letter was addressed from the jail to the Magistrate stating that he was desirous of retracting the confessional statement though he never went to the Magistrate for the same. Months thereafter, he succumbed to cancer. This incident, according to Mr. Venegaonkar, give rise to a feeling in the mind of the prosecution that the Applicant is powerful enough to meddle with the prosecution, if released on bail, by misusing the liberty. Considering the nature and gravity of the accusations, learned counsel submits that he does not deserve his release.

5. The prosecution case compile the material against the accused persons in respect of an incident which took place on 01/04/2018, when at about 21.35 hours, a telephonic information was received from one Dilipbhai Patel, owner of Vishal Bar & Restaurant informing that an incident of firing had taken place in

his restaurant. Two persons were reported to have been shot by five to six assailants. The information was recorded in the station diary and on reaching the spot, two dead bodies were lying in a pool of blood, which were identified of Ajay Raman Patel @ Manjaro and Dharendra Durlabh Patel @ Dhiru. Few fired and live cartridges were lying on the spot and one Innova vehicle belonging to deceased Ajay was found parked outside the Vishal Bar & Restaurant.

6. On the complaint filed by Chhotubhai Patel, a relative of the deceased, who was present on the spot, the investigating machinery was set rolling. The informant is also an eye-witness to the incident of firing and, as per his narration, the deceased persons had gone to Jalaram Temple, Vapi to attend a family function and while en-route at Silvassa, when they halted the car at the Vishal Bar & Restaurant for purchasing liquor, while deceased Dharendra accompanied the informant to the counter, deceased Ajay sat in the driving seat. At that moment, five to six unknown persons arrived in a Scorpio car, Maruti swift and a motor cycle. The assailants sitting in the car started firing on Ajay, who ran out of the vehicle and went inside the Vishal Bar & Restaurant. Deceased Dharendra, who was standing at the counter also attempted to gain shelter in the Bar. The assailants chased Ajay in the Bar holding firearms and rifles, country made pistols, revolvers, koyta, etc. and they started firing at the deceased persons. On being assaulted, he fell down in a pool of

blood. The assailants walked out of the Bar and left in their respective vehicles.

6. The CCTV footage from the camera was obtained under panchanama and it revealed faces of the assailants. Statements of persons present on the spot were also recorded. However, the persons, who were responsible for firing the arms at the deceased were not identified by the witnesses, including the Complainant as the assailants were not known persons and, therefore, an inference was drawn that they are from some other place. The investigation led to accused Noor Mojjam in Uttar Pradesh and his interrogation further led to the arrest of more accused persons viz. Mohd. Hasan, Rashid Murtuza, Aslam Khan.

7. The name of one Jayprakash Pandey surfaced as the person, who had conspired and hired all the assailants for eliminating deceased Ajay. The motive projected was an amount which was due and payable by him to the deceased and the deceased was constantly threatening him to repay and, to get rid of him, contract killers were hired. Jayprakash Pandey @ Pakiya came to be arrested. The other persons were shown as absconding and one after another as the names of the other accused persons surfaced, supplementary charge-sheets came to be filed. During the course of investigation, one absconding accused Pooran Prakash Mishra @ Rahul was arrested on 17/07/2019 in Mumbai and during his interrogation, name of one

Ikrar Khan Pathan @ Chhotu surfaced, who has been attributed the role of damaging the chassis number and engine number of the vehicle used in the offence. Ikrar Khan Pathan owns a garage on Coastal Highway near Wad Chowki at Daman and documents seized reveal that the Scorpio car belonged to him. Accused Rahul Mishra identified the motor cycle used in the offence.

During the interrogation of these accused, it was revealed that the accused persons belonging to different States had gathered at Daman since 3 to 4 months prior to the date of incident and they were staying in Flat No.702, Siddhivinayak Apartment, Khariwad, Nani Daman. When probed about the ownership of the flat, it was found to be belonging to the present Applicant Jayesh Nanubhai Kamli @ Rakesh. Since the Applicant, in spite of repeated efforts, did not report for interrogation, an enquiry was conducted with the office bearers of the Society of Siddhivinayak Apartment and statements of one Prajith Nair and Sanjay Gad, working as Secretary of the said Society came to be recorded. The two witnesses, in their statements recorded under Section 161 of the Cr.P.C. on 26/07/2019 and 12/09/2019 in sync, state that in the end of 2017 and initial months of 2018, four to five persons stayed in Flat No.702 of the Siddhivinayak Apartment, owned by the Applicant. When they were asked to submit their identity cards, they refused and the names of the persons were disclosed by the said witnesses. Prajeet Nair state that some other persons also

used to frequently visit the said flat and the said persons were Hasan, Rahul and Pritam. One person, who has been described as thin person was also a visitor and his name was later revealed to this witness as Chhotu.

8. Complaint was made to the owner of the flat about the said occupants and their movements causing inconvenience to the members of the Apartment. In the end of March, 2018, since the occupants of Flat No.702 burst firecrackers in the balcony and window of the said flat, the Applicant, the owner of the said flat was intimated and he was asked to get the flat vacated and the persons left the room, is the statement. The office bearers were confronted with the photographs of the accused persons and they confirm that these are the same persons, who were occupying the said flat few months prior to the commission of offence.

9. From the statements of the aforesaid two office bearers of the Society, it is apparent that the Applicant was aware of the co-accused occupying the said flat and, qua the said material, the submission of Mr. Ponda, learned senior counsel is to the effect that merely because he has allowed his flat to be used for residence to persons, who were associates of Suresh Patel @ Sukha itself does not lead to an inference that either he was a conspirator or he was aware of the conspiracy to commit the murder. His submission is that he had never visited the flat during the time the assailants occupied it, nor there is any

material compiled in the charge-sheet establishing any communication between the occupants of the flat and the Applicant during their alleged stay between the end of 2017 and last week of March/April, 2018.

10. The said submission does not hold any merit since if the statement of Rashid Murtuza, who is no longer alive, but whose confessional statement was recorded before the Chief Judicial Magistrate, Daman on 19/05/2020 much after his arrest in May, 2018, he has established his link with the other co-accused Noor Mojjam, with whom he stayed in the Flat No.702 in Siddhivinayak Apartments. According to his statement, Anis Khan, Samsad @ Samad, Sameer and Guruji from Banaras were also occupying the flat. He was paid money by one Miten Patel, a close aid of Sukha Patel. He has further stated before the Magistrate that he stayed in the flat about a month and he was visited by Vipul Patel, brother-in-law of Sukha Patel and even the Applicant named as Rakesh Kamli also came there. He had stated that Miten Patel, Vipul Patel, Rakesh used to provide money for his expenses. This clearly reflects that the Applicant was aware of the persons staying in the flat and he arranged for their expenses.

11. The documents pertaining to the ownership of the flat came to be recovered from the Registrar's office. The Applicant came to be arrested on 15/12/2019 and, during his remand, a

document was produced before the Court, which revealed that the flat owned by him in Siddhivinayak Apartment was sold to one Jayprakash Pandey @ Pakiya in the year 2016. Jayprakash Pandey @ Pakiya is a co-accused in the crime and was already arrested. The document provided to the Investigating Officer was a notarized document and the investigation was made as regards the same. The stamp vendor – Rashidaben Pardiwala gave her statement that in the month of July, 2019, one person named Jayesh Nanubhai Kamli @ Rakesh had visited her with a request to provide a back-dated stamp paper and since she was in possession of a stamp paper of Rs.100/- of the year 2016, she sold it to him for Rs.1,000/-. The statement of Advocate Ashwinikumar Patel of Pardi, Gujarat is also recorded and he has stated that one person by name, Sukha Patel forced him to come to his house along with his notary stamp and register. When he was brought to the house of Sukha Patel by one Nilay Patel, the present Applicant along with Miten Patel were sitting in the house. The witness was coerced to notarize an agreement by Sukha Patel and the agreement came to be executed dating back to the year 2016. At the time of execution of the agreement, one party was present while the other party Jayprakah Pandey was not present. The document pertains to transfer of a flat from one Jayesh @ Rakesh Kamli. He was coerced to notarize the said document and he also made back-dated entry in his notary register. The statement of these two witnesses i.e. Rashidaben Pardiwala and Advocate Ashwinikumar Patel are compiled in the

charge-sheet. The hurried transfer by procuring back-dated stamp paper and pressurizing the notary and putting the signature on the said document itself reveals that the Applicant is part of the conspiracy.

12. Though Mr. Ponda, learned senior counsel has vehemently argued that assuming for a moment that the document was executed to be an anterior date, this was for the reason that if the police come after him, he could use the sale deed as a valid defence to debunk any kind of allegation against him that he was the owner of the flat in question, where it is alleged that the four assailants had stayed there for approximately three months. Mr. Ponda would submit that this has nothing to do with the actual conspiracy and, at the most, it is a circumstance to cover up the involvement of Suresh Patel or the Applicant in giving the premises to the assailants. The said submission deserves a rejection as, if the Applicant was not at all involved in the conspiracy, there was no need for him to be a participant in back-dated execution of the documents in the presence of the accused Sukha Patel. The agreement in question is in respect of a flat, which is owned by the Applicant, wherein the co-accused/assailants were offered shelter for about 3 to 4 months. It is not possible to lent out the premises to a person merely because he was directed to do so, but knowing that something illegal has transpired, the Applicant can be seen executing the agreement dating it back to the year 2016 and not

only this, the party to whom, the flat is transferred is another co-accused Pandey, who is alleged to be the person, who accepted the contract and brought the assailants. The said act of the Applicant, therefore, cannot be termed as innocuous as it is tried to be projected.

13. The investigation, which had initially involved some unknown persons as the assailants, later on revealed that it was a case of contract killing and the actual assailants belong to different States. The motive behind the double murder was the business rivalry between deceased Ajay Patel, who was in the business of scrap and transport. After the arrest of the present Applicant, the actual conspiracy has surfaced revealing that Sukha Patel, Ketan Patel @ Chako, Miten Patel, present Applicant Jayesh, Arun Dubey and Vipul Patel are part of a conspiracy to eliminate deceased Ajay by hiring contract killers. The job of hiring the contract killers was assigned to accused Jayprakash Pandey and the charge-sheet contain material pertaining to planning and awarding of contract, which took place at Hotel Hilltop and also in the office of Sukha Patel. Statements of several persons, who have witnessed the presence of the Applicant in the said meetings are placed on record. The Applicant and the main accused Sukha Patel are closely associated with each other and they have a common interest in business. The material in the charge-sheet reveal that the present Applicant facilitated the commission of offence by providing his

flat at Nani Daman for purpose of sheltering the assailants prior to commission of the offence and in order to avoid the implications, he entered into a deed to show that the flat was sold by him in the year 2016 itself and by executing a back-dated document, attempt was made to mislead the investigation. The material in the charge-sheet reflect that the Applicant used to visit the assailants during their stay in the flat and also arranged for their means of sustenance. The entire charge-sheet, therefore, reflects the conspiracy to commit the double murder and the Applicant is a part of the conspiracy. In any case, in order to establish the charge of conspiracy, which is hatched in secrecy of darkness, the material compiled in the charge-sheet provide a clue for connecting the Applicant as one of the conspirator in the double murder case. The effect of the confessional statement of accused Rashid Murtuza on his death, will be a matter of trial. The offence with which, the Applicant is charged is a heinous one and two persons have been done to death by hatching a conspiracy and particularly, the assailants, who are roped in, are the persons from different parts of the country and in order to avoid any clear link to be established, the assailants, who are not residents of Union Territory of Daman and Diu, were hired.

Prima facie, the charge-sheets contain sufficient material to implicate the present Applicant. Taking into account the gravity and seriousness of the offence and the material compiled in the charge-sheet against the present Applicant, he do not

deserve his release on bail.

The Application is rejected.

[SMT. BHARATI DANGRE, J.]