

Ketankumar Bhikubhai Patel ... Applicant

The Union Territory of Daman & Diu
and Anr. [Through Nani Daman Police
Station in C.R. No.39 of 2018.] ... Respondents

Reshmiben Wd/o. Late Ajay Patel ... Applicant

The Union Territory of Daman & Diu
and Anr. ... Respondents

Mr. Aabad Ponda, senior counsel with Mr. Karma Vivan for the Applicant.

Mr. H.S. Venegaonkar for Respondent No.1.

Mr. Majeed Memon for the Intervenor.

Mr. A.R. Kapadnis, A.P.P. for the State.

AJN

CORAM : SMT. BHARATI DANGRE, J.

DATED : 26TH AUGUST, 2021.

ORDER:-

1. The Applicant faces charge of double murder, in an incident, which took place on 01/04/2018 in Daman and the case of the prosecution is that two persons were killed by six assailants, who came on the spot and fired at them. He is charged for the offences punishable under Sections 302, 120-B, 201, 212, 468, 471, 420 read with Section 34 of the IPC and under Sections 25 and 27 of the Arms Act.

2. Heard Mr. Ponda, learned senior counsel appearing for the Applicant, Mr. Venegaonkar, learned counsel appearing for the Union Territory of Daman and Diu and Mr. Majeed Memon, learned counsel representing the Intervenor – Rashidaben Patel, widow of Ajay Raman Patel, one of the deceased in the attack.

3. 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 has 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 found lying in a pool of blood and the said bodies were recognized as Ajay Raman Patel @ Manjaro and Dhirendra Durlabh Patel @ Dhuru. Few fired and live cartridges were lying on the spot and one Innova vehicle belonging to deceased Ajay Patel was found parked outside the Vishal Bar & Restaurant.

4. 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 Dhirendra accompanied the informant to the counter for purchase of liquor, 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 deceased Ajay, who ran out of the vehicle and went inside the Vishal Bar & Restaurant. Deceased Dhirendra, who was standing at the counter also attempted to gain shelter in the Bar. The assailants chased deceased Ajay in the Bar holding firearms such as rifles, country made pistols, revolvers, koyta, etc. and they started firing at the deceased persons, who fell in a pool of blood. The assailants walked out of the Bar and left in their respective vehicles.

5. The CCTV footage from the camera was obtained under panchanama and it reveals 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.

6. The name of one Jayprakash Pandey surfaced as the person, who had conspired and hired all the assailants for eliminating deceased Ajay Patel. The motive projected was an amount 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 one Jayesh Nanubhai Kamli @ Rakesh.

7. In the entire episode, when the statements of witnesses were recorded, the name of the Applicant has surfaced through the said witnesses. The witness by name Dilipbhai Patel, who was running Hotel Hilltop and was acquainted with Suresh Patel @ Sukha, who is described by him as a politically active person and involved in the business of scrap, cable, petroleum, liquor, transport, etc. Referring to the past, the witness has stated that he also knew Ajay Patel i.e the deceased, very well, who was also in the business of scrap and transport and Ajay Patel and Suresh Patel, prior to the murder of one Deepak Patel, were close friends and they often used to visit his hotel in company of the other persons, whose names are given as Ramesh Patel, Mukesh Patel, Miten Patel, Naresh Patel, Jayesh Kamli, etc. However, after the murder of Deepak Patel, they stopped visiting the hotel as Ajay Patel was sent to jail. After he got acquitted, the witness

speak of one meeting, which was held between Ajay Patel and Suresh Patel at his hotel where he overheard a brawl broken out and Ajay Patel left the hotel. After that incident, couple of months later, another meeting was organized in his hotel, in which Suresh Patel, Ketankumar Patel (the present Applicant), Jayesh Patel, Miten Patel, Ramesh Patel and two unknown persons, who's names were later on revealed to him as Jayaprakash Pandey @ Pakiya and Sajidali, were present. Though he was not part of the meeting, he could overhear the name of Ajay Patel during the meeting.

Though Mr. Ponda is extremely critical of the statement, which is relied upon by the prosecution and his submission is that the said conversation, by no means, indicates any conspiracy. It is worth to be noted that the conspiracy is hatched in secrecy of darkness and the direct evidence of which may not be available, but the evidence in the form of statement of Dilipbhai Patel reveals that various accused persons had come together, prior to the deadly attack on Ajay Patel and in the said meeting, some discussion took place about Ajay Patel.

8. The statement of one Chetan Mangela is also relied upon by the prosecution and he is a person working with Suresh Patel as Accountant. He speaks of Vipul Patel, the brother-in-law of Suresh Patel, who joined the office and also states that one Miten Patel was also associated with the office and shares financial interest with him. Further, the name of the Applicant

Ketankumar Patel is also taken by Chetan Mangela, who states that he used to come to the office sometimes. Nature of business activity of Suresh Patel is given by the said witness. The said witness speaks of the time slot of June/July, 2017 when Jayprakash Pandey @ Pakiya and Sajidali started visiting he office of Suresh Patel frequently, accompanied by Rashid Murtaza on some occasions. The said witness talk of meetings held by the main accused Suresh Patel with Jayprakash Pandey @ Pakiya and Miten Patel and, in these meetings, it is alleged that the Applicant used to remain present and the discussion used to take place in a discrete manner.

From February to March, 2018, huge amounts of money were paid to Jayprakash Pandey @ Pakiya and Sajidali by Miten Patel either directly through Angadia or through cash on instructions of Suresh Patel, the details of which were maintained by Vipul Patel. Names of one Pritamsingh and Raj Panchal are taken by this witness as persons, who used to come to the office to collect the amounts. This witness throw light on the conspiracy that was hatched by Suresh Patel in close association with the present Applicant. Various charge-sheets filed in the offence reveal that initially, the investigation began against some unknown persons on being surfaced as assailants, who committed the murder of Ajay Patel and Dhirendra and they were not identified as they belonged to different States. However, on a deeper investigation, the motive behind the murder surfaced on record and it was the business rivalry of

deceased Ajay Patel, who was also into scrap and transport business. Five charge-sheets are filed, one after another, as the investigation of the co-accused led to the disclosure of another conspirator and what ultimately emerged after the arrest of Jayesh Patel, who revealed that Suresh Patel, Ketankumar Patel (the present Applicant), Miten Patel, Arun Patel and Vipul Patel played key roles in the murder of Ajay Patel by hiring contract killers. The job of hiring the contract killers was assigned to Jayprakash Pandey @ Pakiya for Rs.30 lakhs and the conspiracy was hatched at Hotel Hilltop and also in the office of Suresh Patel and two witnesses speak about the said conspiracy.

9. The charge-sheet also refer to the recovery of the weapons, which were used for commission of offence and after the co-accused Suresh Patel along with accused Sajidali were arrested, Suresh Patel led to the recovery of country made pistol with three live rounds and the weapon is recovered from the house of the present Applicant and the FSL report has established that the same weapon was used in commission of crime. This incriminating circumstance has been compiled in the charge-sheet justifying the accusations leveled against him. Accused Ketankumar Patel is the brother-in-law and partner of Suresh Patel and the prosecution alleges that both of them together are involved in several illegal activities of bootlegging and deceased Ajay Patel, who was also running the scrap business had enmity with Suresh Patel and the present Applicant. Pertinent to note

that the Applicant was absconding and inspite of strenuous efforts by the Investigating Team, he could not be traced. The family members did not disclose his whereabouts, which resulted in issuance of non-bailable warrants and proclamations against him. It is only after this, he approached the court seeking anticipatory bail, which was rejected by the hierarchy of courts. He then surrendered in terms of the undertaking given to the Apex Court and, he is presently languishing in jail, facing the accusations. The involvement of the present Applicant has also surfaced in the confessional statement of Rashida Murtaza, who has deposed before the Magistrate that the present Applicant was present along with co-accused, when the assailants handed over the firearms used in the commission of offence. The legal effect of the said statement, in the wake of subsequent development of death of the said accused, would be examined at the time of trial. The charge-sheet also compiled the call details, where the Applicant was in touch with the co-accused Suresh Patel.

10. Supplementary statement of one Rajkumar Lohar also involves the Applicant as the conspirator in eliminating Ajay Patel and though the said statement is in the form of a supplementary statement recorded on 21/02/2020, the said witness divulge the conspiracy hatched and also disclose details of the monetary consideration received by the co-accused from prime Accused Suresh Patel.

11. Though the recovery of pistol from a drawer in the garage of the present Applicant is frowned upon by the learned counsel Mr. Ponda, by arguing that the recovery is effected on 06/03/2020 under Section 27 of the Evidence Act at the instance of Suresh Patel and since it is from the open garage of the Applicant, which was not under lock and key, it is not bereft of any merit. The document of seizure of the said pistol in the form of panchanama will be proved at the time of trial and if the panchas support the case of the prosecution, the argument about the recovery being at the belated stage and in the absence of the present Applicant would lose its ground. The FSL Report clearly reflects that the empty cartridges found on the spot were fired from the weapon recovered from the garage of the present Applicant. Mere delay in recovery of the weapon does not make it an exculpatory circumstance.

12. On an earlier occasion, the Anticipatory Bail Application filed by the present Applicant came to be rejected by a detailed order on 24/09/2020 by recording the major incriminating circumstances being referred to as the recovery of katta or pistol from a drawer in his garage and that the offence is serious and the custodial interrogation is very much warranted. Being aggrieved by the said order, the Applicant had knocked the doors of the Hon'ble Apex Court, but the Special Leave Petition came to be dismissed with an observation that in the event the Petitioner surrenders and makes an application for bail, the same

shall be considered in accordance with law, without being influenced by the observations made by the High Court in the impugned order. I have perused the charge-sheet and the material compiled in it, independently and have decided the Application on its own merits by taking into account the material collated in the charge-sheet by the prosecution justifying the charge leveled against the present Applicant.

13. The material compiled in the charge-sheet, *prima facie*, establishes the involvement of the Applicant in the conspiracy, which was hatched for giving effect to the offence of murder of Ajay Patel and the role of the Applicant has clearly surfaced through the said charge-sheets. The detailed analysis of evidence will be a matter of trial, but taking into account the well settled parameters while releasing an accused on bail being the nature and gravity of the accusations, the severity of punishment in the event of conviction and reasonable apprehension of the witnesses being under threat, on being released on bail and the same being clearly set out in the affidavit filed by the prosecution opposing the application, dis-entitle the Applicant for bail.

The application is rejected.

[SMT. BHARATI DANGRE, J.]