

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1221 OF 2019

Rameshwar Yeshwant Patil	... Applicant
V/s.	
The State of Maharashtra	... Respondent

WITH
INTERIM APPLICATION NO. 476 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1221 OF 2019

Vinod Kaluram Vishe	... Intervenor
<u>In the matter between :-</u>	
Rameshwar Yeshwant Patil	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr.Deepak Natu i/b. N. Deepak & Co. for Applicant.
Mrs.Veera Shinde, A.P.P for Respondent-State.
Mr.Anil Jadhav, P.S.I., Khadakpada Police Station.

CORAM : A.S. GADKARI, J.
DATE : 18th September 2021.

PC. :

1. Heard Mr.Natu, learned counsel for the Applicant and Mrs.Shinde, learned A.P.P for the State. Perused chargesheet.
2. By an Order dated 22nd July 2019, Applicant was granted interim relief and was directed to attend the Investigating Officer on stipulated dates to join the process of investigation.

3. The First Information Report is lodged by Mr.Nandkumar V. Fadtare, Police Sub-Inspector, Khadakpada Police Station, Kalyan (West) on 5th April 2018 for the offence punishable under Sections 120(B), 302, 115 of the Indian Penal Code and under Sections 4, 25 of the Indian Arms Act.

It is the prosecution case that, on 3rd April 2018 Senior Police Inspector of the said Police Station received a complaint from the complainant/intervenor Mr.Vinod K. Vishe stating that, the complainant and his family members were apprehending threat to their lives from the Applicant and co-accused Sachin B. Pacharkar. The said application was taken up for enquiry and on 4th April 2018 when the crime patrolling party was on duty, at about 6.00 pm, near Karnala Devi Mandir on the road leading to Gauripada lake, the crime patrolling party noticed one person standing thereof in suspicious condition. The patrolling team therefore called him near them. The said person therefore started running from the said place when the police party accosted him and took him into custody. During his personal search, they found one sharp edged chopper tucked to the front side of his trouser. The said person disclosed his name as Sachin B. Pacharkar. During the course of his interrogation at police station, the said Sachin Pacharkar (co-accused) disclosed that the Applicant had given him contract to kill Mr.Vinod Vishe and for that had assured to give a residential premises worth Rs.10,00,000/- at Titwala, Taluka Kalyan, District Thane. In this brief premise, the present crime

is registered.

4. Perusal of record indicates that, during the course of investigation of the present crime on 6th April 2018 the police have recorded statement of witness Sujit @ Charli K. Shaji, a friend of Sachin Pacharkar (co-accused) under Section 161 of Cr.PC.. His statement under Section 164 of Cr.PC. has also been recorded by the learned Judicial Magistrate First Class, Kalyan on 13th April 2018.

Learned A.P.P, on instructions, submitted that, the said statement recorded under Section 164 of Cr.PC. of witness Sujit @ Charli Shaji now forms part of chargesheet.

Perusal of statement of said witness indicates that, Sachin Pacharkar (co-accused) had disclosed to him that, he had made a plan to commit murder of Vinod Vishe (intervenor) as the said Vinod Vishe on an earlier occasion had assaulted his father and therefore he was intending to take revenge of the same. It is also stated that, Sachin Pacharkar (co-accused) purchased one hockey stick from a sports shop. That after purchasing the said hockey stick, Sachin Pacharkar (co-accused) along with his friend Akshay went away.

It is to be noted here that, in the said statement it is no where stated about a 'fire-arm' which was to be used by Sachin Pacharkar (co-accused) in the alleged commission of present crime, provided by the

Applicant.

In this background, when Sachin Pacharkar (co-accused) was in custody of police, on 5th April 2018 made a disclosure statement under Section 27 of the Indian Evidence Act and in furtherance thereof, a fire-arm (pistol) along with two live cartridges was seized from him. In his disclosure statement Sachin Pacharkar (co-accused) has stated that, the said fire-arm was provided to him by the present Applicant. The Police are seeking custody of the Applicant for knowing the fact that, from where the Applicant had procured the said alleged fire-arm.

5. As noted earlier, the co-accused or rather prime accused Sachin Pacharkar had disclosed his prospective plan to eliminate Vinod Vishe, as Mr.Vinod Vishe (intervenor) had assaulted his father earlier thereto. A separate and distinct motive has surfaced on record from the statement of the said witness namely Sujit @ Charli Shaji.

Record further indicates that, Mr.Vinod Vishe (intervenor) and Applicant herein were partners in the construction business and subsequently their relations got soared and due to which Vinod Vishe filed a complaint with the concerned police station on 3rd April 2018. After lodging of the complaint by Vinod Vishe with the said police station on 4th April 2018, Sachin Pacharkar (co-accused) was immediately arrested with a sharp edged chopper in his possession.

6. As Sachin Pacharkar (co-accused) was also having a distinct and substantive motive to commit murder or to eliminate Mr.Vinod Vishe, it appears to this Court that, the motive propounded by the prosecution for alleged preparation to commit murder of Vinod Vishe by the Applicant assumes secondary importance in the present crime.

7. The Police after completion of investigation qua Sachin Pacharkar (co-accused) have submitted chargesheet under Section 120(B), 115 of the Indian Penal Code, Sections 3, 4, 25 of the Indian Arms Act and Sections, 37(1), 135 of the Maharashtra Police Act, on 1st June 2018 in the Court of competent jurisdiction. It thus appears that, at the time of filing of the chargesheet, Police have now dropped Section 302 of the I.P.C. and have retained Section 115 of the I.P.C. to the present offence.

8. Learned A.P.P. submitted that, there are three antecedents at the discredit of the Applicant. It is to be noted here that, according to this Court, the prosecution till date has not offered any satisfactory explanation about the exact motive behind the present crime and therefore the antecedents at the discredit of the Applicant assumes no much importance while deciding the present application. The record indicates that, in pursuance of Order dated 22nd July 2019 the Applicant has attended the Investigating Officer and has co-operated in the process of investigation.

9. In view of the above and after perusing the chargesheet, this Court is of the opinion that, the custodial interrogation of the Application for further investigation of the present crime is not necessary and the Applicant can be protected by pre-arrest bail.

10. Interim relief, granted by Order dated 22nd July 2019, is hereby confirmed. However the condition to attend the Investigating Officer is waived.

11. Anticipatory Bail Application is allowed in the aforesaid terms.

12. In view of disposal of Anticipatory Bail Application, Interim Application No. 476 of 2019 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]

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Date: 2021.09.23
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