

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Sagar @ Gravity Shashikant Shinde ...Applicant
Versus
The State of Maharashtra and Anr ...Respondents

Mr. M. K. Kocharekar a/w Mr. Shailesh D. Chavan, for the Respondent No.2.

DATE : 24th FEBRUARY, 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R.No.I-114 of 2017 registered with the Dombivali Police Station, District – Thane, for the alleged offences punishable under Sections 302, 307, 364, 452, 120B, 201, 143, 144, 146, 147, 148, 149, 323, 504, 506, 506(2) of the Indian Penal Code and under Sections 3(25), 27, 30 of the Arms Act.

3. Learned Counsel for the applicant submits that there is no material to connect the applicant with the alleged offences. He submits that the applicant had no motive to kill Kishore Chowdhary or Mahima Wilson. He submits that although according to the prosecution, the applicant was present at the spot at the time of the alleged incident, none of the eye-witnesses have identified the applicant as being present at the spot. He submits that it is not the prosecution case that the applicant entered or left the premises i.e. Devi Shivamrut Society alongwith the other co-accused. He submits that when the applicant was arrested on 16th May 2017, in his personal search, allegedly the key of a Scorpio car was seized under a panchanama, though he is alleged to have been driving an Innova. He submits that when the panchanama of the car was done on 16th May 2017, nothing incriminating was found in the car i.e. no blood stains were noticed, however, when the Japti Panchanama was done on 20th May 2017, i.e. after 4 days, some red colour stains were seen on the seat belt of the car rendering the finding of blood stains in the car suspect. He submits that although the applicant has not been identified by any of the eye-witnesses in the Test Identification Parade (TIP), subsequently Mr. N. H. Mudgan (Police Officer who was investigating the case), has identified the applicant in the CCTV footage, which cannot be relied upon. Learned Counsel submits that there are no CDR records pointing to the complicity of the

applicant. Learned Counsel for the applicant also seeks bail on the ground of parity. He submits that identically placed co-accused – Ajay Jaipal Walmiki, has been enlarged on bail by this Court (Coram: A. S. Gadkari,J.) vide order dated 2nd May 2019, passed in Criminal Bail Application No.2179 of 2018. He submits that even Ajay Walmiki was seen in the CCTV footage of Devi Shivamrut Society, as being present at the spot and the same is mentioned in the said order. He further submits that the applicant has no antecedents.

4. Learned APP vehemently opposed the bail application. He submits that when Ajay Walmiki was enlarged on bail vide order dated 2nd May 2019, the CCTV footage report (FSL Report) was not available on record, inasmuch as, the same was received only on 28th May 2020 i.e. post grant of bail to Ajay Walmiki. Learned APP submits that in the CCTV footage report, the applicant is clearly seen with the assailants. He submits that the applicant was driving the Innova vehicle and is seen with the co-accused and even running from the spot soon after the assault on Kishore Chowdhary. He submits that after Kishore Chowdhary (deceased) was assaulted by the co-accused, Mahima Wilson (deceased) was taken by the co-accused in two vehicles and thereafter murdered somewhere in Pratapgad, Mahabaleshwar. He submits that all the accused travelled in two

vehicles i.e. Innova and Scorpio and that Mahima was taken in one of the said vehicles. He submits that the dead body of Mahima was recovered under Section 27 of the Evidence Act, at the instance of co-accused – Dilip Bhoir (Original Accused No.1). He submits that from the CCTV camera, it appears that the applicant was present alongwith the co-accused near the area where the deceased - Kishore and Nitin Joshi were assaulted. He submits that merely because the eye-witnesses have not identified the applicant, does not mean that the applicant is not involved in the alleged crime. He submits that the CCTV camera report clearly shows the presence of the applicant near the Innova car and talking to one of the co-accused – Shankar Bhoir (Original Accused No.2) and thereafter running from the said spot, soon after the assault.

5. Learned Counsel for the respondent No.2 supported the submissions advanced by the learned APP.

6. Perused the papers. In the present case, two persons have been murdered i.e. Kishore Chowdhary (deceased) and Mahima Wilson and one Nitin Joshi sustained a firearm injury. Kishore Chowdhary (deceased) received firearm injuries and Mahima Wilson was abducted and latter strangulated and his body was found somewhere in Pratapgad,

Mahabaleshwar. The injured - Nitin Joshi was also fired at by the co-accused. It is not the prosecution case that the applicant entered the premises of Devi Shivamrut Society alongwith the other co-accused, where Kishore and Nitin were fired at. According to the prosecution, the applicant was a driver on Innova vehicle and that he was part of the conspiracy to kill Kishore Chowdhary and Mahima Wilson. Although, the learned counsel for the applicant sought bail on the ground of parity i.e. parity with Ajay Walmiki, it is pertinent to note that Ajay Walmiki was enlarged on bail on 2nd May 2019, whereas the CCTV report (FSL Report) was received by the police on 28th May 2020. At the time when Ajay Walmiki was enlarged on bail, the details of the CCTV camera were admittedly not on record. The CCTV footage report *prima facie* shows the presence of the applicant at the spot. The CCTV footage report shows that at 11:45:25, the applicant had come in a Innova car and had parked the same in the direction of the road. The description of the clothes worn by the applicant are mentioned in the said report. It is also mentioned that Vishal Bhoir (Original Accused No.5) was helping the applicant park the said vehicle at the office of the original accused No.1, which is close to where the incident took place. It is pertinent to note that Vishal Bhoir (Original Accused No.5), Shankar Bhoir (Original Accused No.2), Dilip Bhoir (Original Accused No.1) and others are alleged to have fired at

Kishore Chowdhary. It also appears from the CCTV footage report that at about 11:53:13, Shankar Bhoir (Original Accused No.2) is seen talking with the applicant. At about 11:53:21 Akash Ahire (Original Accused No.6) is seen going from the accused office, in the direction of the accused – Bhoir’s house; at 11:53:32, the applicant is seen running from the accused - Bhoir's house, in the direction of the road; at about 11:53:44, the applicant is seen running towards accused - Bhoir's house; between 11:53:42 to 11:54:05, Shankar Bhoir is seen standing near his office and making some gestures; at around 11:58, the applicant is seen opening the Innova car door and seen sitting inside; between 12:00:43 to 12:00:49 midnight all the accused are seen running; between 12:00:50 to 12:00:53, accused Dilip Bhoir, Sagar Bhoir and other co-accused are seen forcibly pulling Mahima; that at 12:01:13, the Scorpio and Innova cars are seen leaving in speed. The CCTV footage *prima facie* clearly shows the presence of the applicant along with the other co-accused. Section 149 has been applied to the said case. In these circumstances, merely because there is no overt act attributed to the applicant does not mean that the applicant is not concerned with the crime. Apart from the aforesaid, it appears that when the applicant was arrested on 16th May 2017, the key of the Scorpio car was seized from him under a seizure panchanama. No doubt in the panchanama dated 16th May 2017, no blood stains were seen in the Scorpio car, however, after 4 days,

some red coloured stains were seen on the seat belt of the car. Merely because the applicant had no motive to kill Kishore Chowdhary and Mahima, cannot be a ground for releasing the applicant on bail. The CCTV report clearly shows the presence of the applicant with other co-accused, prior to and after the assault on Kishore Chowdhary (deceased) and Nitin. As noted earlier, Mahima was taken by all the accused in 2 cars i.e. Innova (driven by the applicant) and in Scorpio, towards Pratapgad, Mahabaleshwar where ultimately his body was found.

7. Considering the *prima facie* material as aforesaid, this is not a fit case to enlarge the applicant on bail.

8. Hence, the application for bail is rejected and disposed of as such.

9. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.