

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1627 OF 2020

Mohiddin @ Aman Bashir Godad .. Applicant
 Versus
 The State of Maharashtra .. Respondent

WITH
CRIMINAL BAIL APPLICATION NO.1463 OF 2021

Ranjeet @ Nana Narayan Gavali .. Applicant
 Versus
 The State of Maharashtra .. Respondent

...

Mr.Niranjan Mundargi with Mr.Nitesh J. Mohite for the
 Applicant in both the Applications.
 Mr.A.R.Kapadnis, APP for the State.

...

CORAM: BHARATI DANGRE, J.
DATED : 18th AUGUST, 2021

P.C:-

1. The applicants, in two bail applications, are charge-sheeted vide charge-sheet No.41 of 2020 filed on 30/03/2020 as accused Nos.3 and 4 for the offences punishable under Sections 302, 201, 120-B read with Section 34 of the Indian Penal Code (for short, “IPC”) and Sections 4 and 25 of the Arms Act. Apart from the applicants, there are three other accused persons, who are charged for committing murder of one Salim Bashir Bhilwade on 02/01/2020. On the basis of a

complaint filed by one Dastagir Mohd. with Miraj City Police Station on 03/01/2020, crime came to be registered and the investigating machinery was set rolling.

2. The submission of learned counsel Mr.Mundargi appearing for the applicants is to the effect that the role attributed to the present applicants does not justify the charge against them for the offence punishable under Section 302 of the IPC as the charge-sheet does not contain any material reflecting that they are the assailants, who committed murder of Salim. The submission is that the applicants came to be arrested in connection with the said C.R. on 16/01/2020 and 14/01/2020 respectively and after investigation, their role has clearly surfaced in the charge-sheet and in the wake of the material compiled therein, their further incarceration is unwarranted. It is submitted that there is no apprehension expressed by the prosecution that they are likely to flee the court of justice or tamper with the prosecution evidence and, therefore, they deserve to be released on bail.

3. The charge-sheet, when carefully perused, reveals that accused Nos.1 and 2 had previous enmity with one Wasim Mulla, resident of Kisan Chowk, Sarwan galli, Miraj, on account of a tiff which had occurred in August 2019 revolving around one rickshaw. The differences between them were resolved by Salim Bhilwade (the deceased). At that time, he had caught hold of accused Nos.1 and 2 and threatened them of dire consequences and also hurled abuses at them in filthy language.

The charge-sheet reflect that to revenge this act of the deceased, accused Nos.1 to 5 hatched a conspiracy to eliminate Salim and all the accused persons acted in furtherance thereof. As far as the present applicants are concerned, they were assigned the role of tracking the movements of deceased Salim and keeping accused No.1 updated about the same. Accused No.3-Mohiddin continuously provided information to accused Nos.1 and 2 on their respective mobiles and the charge-sheet compile material in the form of CDR. On the day of incident, accused Nos.3 and 4 i.e. the present applicants hide themselves in a lane proceeding towards Noorani Galli and as soon as the deceased came out of the lane and proceeded towards the house of witness Salma, they passed on information to accused Nos.1 and 2. The case of the prosecution is that white colour Maruti 800 Car driven by accused Nos.1 and 2, chased the Axtiva driven by the deceased and it hit the Axtiva and the deceased fell down. Thereafter, accused Nos.1 and 2 who were armed with scythe and knife, assaulted the deceased on his neck, face, hand, back, legs and left him profusely bleeding. Accused No.1 also hit the deceased with a big stone on his head and caused a crushing injury.

On the basis of the aforesaid material compiled in the charge-sheet, Sections 302, 201, 120-B read with Section 34 of IPC have been invoked. The postmortem report reveal a brutal assault on the deceased. There is recovery of weapons at the instance of accused Nos.1 and 2 and the spot panchanama corroborates the version of the complainant.

4. The charge-sheet compiles the statement of an eye witness, Amar Gaikwad, who saw accused Nos.1 and 2 smashing the deceased, as he state that they assaulted him by sickles in their hands and the deceased was moaning in pain, seeking help. When the witness questioned the assailants, accused Ejaj is alleged to have rushed towards him and told him not to intervene and he stood on the spot as a mute spectator. The witness state that the two assailants brutally assaulted the deceased in his head by means of scythe and knife in their hands and when he attempted to escape, Sohail pulled him by legs and Ejaj picked up a big stone and hit him in his head on multiple occasions. The incident is witnessed by 10 to 12 other persons, who had gathered on the spot, but all of them were driven away by the assailants. The witness has also spotted a white Maruti 800 Car, which the assailants boarded after assaulting Salim.

5. Another witness whose statement is compiled in the charge-sheet is one Pradeep Hankare, who speak of the conspiracy hatched by the accused persons and he state that Sohail wanted to take revenge of Salim, who had abused him. The witness was made to sit in Maruti 800 car, after consuming liquor and accused Nos.1 and 2, who were in the car, expressed their determination to eliminate Salim and when questioned about what is the plan, he was informed by the assailants that the two accused are waiting at the end of the lane to keep a track of Salim and finger was pointed to the present applicants, who were hiding themselves.

The said statement indicate that the two applicants were assigned a particular role in the conspiracy, which culminated into death of Salim.

6. The applicants are charged with the aid of Section 120-B and 34 of IPC. The conspiracy hatched has surfaced on record through the charge-sheet, but it is apparent that applicants did not play any role in the actual assault and they are not the assailants though they shared the common intention with accused Nos.1 and 2, who ultimately are responsible for causing death of Salim. The charge of conspiracy and common intention will have to be proved by leading positive evidence by the prosecution at the time of trial. Though, prima facie, the material included in the charge-sheet clearly discern the role attributed to the present applicants, they will take the consequences of the charge, which they will have to face under Sections 120-B and 34 of IPC. The applicants were arrested in January 2020 and it is informed that till date, charge is not framed. The investigation is complete and the charge-sheet is filed. The material in the charge-sheet is clearly emanating in support of the charge. However, the applicants cannot be kept behind the bars indefinitely since more than one year has elapsed after their arrest. They are entitled to be released on bail, subject to the condition that they will not leave District Sangli, without permission of the Court where the charge-sheet is instituted. Hence, the following order.

: ORDER :

- (a) The applications are allowed.
- (b) Applicant -Mohiddin @ Aman Bashir Godad and applicant- Ranjeet @ Nana Narayan Gavali shall be released on bail in C.R.No.03 of 2020 registered with Miraj City Police Station on furnishing P.R. bond to the extent of Rs.25,000/- each, with one or two sureties of the like amount.
- (c) The applicants shall not leave District Sangli, without permission of the Court where the charge-sheet is instituted.
- (d) The applicants shall mark their attendance on first Monday of every month before the Sessions Court.
- (e) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(SMT. BHARATI DANGRE, J.)