

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2021.10.30
16:19:23 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2865 OF 2021

Mr. Mahesh Chelaram Bijlani

....Applicant.

V/s

The State of Maharashtra

.....Respondent

Mr. Aabad H. Ponda, Senior Advocate i/b Mr. Ayush Singh for the Applicant.

Ms. Aruna Pai, Spl. P. P. for the Respondent/State.

Mrs. Rutuja Ambekar, APP for the Respondent/State.

Mr. Ameya Lambhate for the Intervenor/complainant.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 25, 2021

P.C.:-

1] Heard.

2] Applicant/Accused No.13 is seeking regular bail in Sessions Case No.281 of 2013 arising out of C.R. No. 67/2013 registered with Vashi

Police Station for the offence punishable under Sections 302, 201 120B read with Sections 3(25), 3(27) and 4(25) of the Arms Act.

3] The case of the prosecution, in brief, is as under:-

4] Deceased Sunil, on 16/2/2013, when he reached his Office at New Bombay, Accused No.1 – Vyankaesh fired from close range and Accused No. 3 – Wajid assaulted him with chopper. The role attributed to the present Applicant is that of hatching conspiracy. This Court on 1/2/2019, rejected prayer of the Applicant for grant of regular bail on the grounds that the Applicant was roped in as he was noticed to be one of the conspirators, availability of circumstantial evidence, his arrest after a period of 20 months from the date of registration of offence and the evidence available on record.

5] It appears that Division Bench of this Court while deciding Writ Petition No.3312 of 2019 vide order dated 9/8/2019 directed the learned Sessions Judge to decide the trial on day-to-day basis. The said order was based on earlier directions issued by the Apex Court on 13/10/2017.

6] It appears that in view of the liberty granted and change in circumstances viz release of the co-accused Suresh and Anurag on 14/1/2020 claiming parity, the Applicant has moved this Application.

7] Submissions of Mr. Ponda, learned Senior Counsel for the Applicant are, following change in circumstances has prompted him to move the application. He has invited my attention to the Division Bench Order of this Court referred to above passed in Writ Petition No. 3312 of 2019 dated 9/8/2019, the order of the Apex Court dated 1/6/2021 passed in Misc. Application No.613 of 2021 in SLP (Crl.) No.2739 of 2020 wherein Applicant was permitted to approach the Trial Court for bail and non-compliance of the directions of the Apex Court passed in Petition for Special Leave to Appeal (Criminal) being Diary No.27220/2017 on 13/10/2017.

8] According to Mr. Ponda, the co-accused Suresh, real brother of Applicant and Anurag are released on bail on 14/1/2020. It is further claimed that Applicant was arrested on or about 1/10/2014 and is incarcerated for last eight years. It is further claimed that upto now

prosecution has examined 66 witnesses and in the order of rejection of bail, Trial Court has recorded that it is overloaded with work and as such trial is not likely to be concluded in recent time. My attention is also invited to the adjournments sought by the learned Special Public Prosecutor on 213 days out of 333 days of hearing. In the aforesaid backdrop, it is claimed that Applicant is entitled to be released on bail.

9] Per contra, learned Special Public Prosecutor Ms. Pai has tried to differentiate the case of the Applicant from that of co-accused Suresh and Anurag. According to her, apart from the fact that after registration of offence Applicant was absconding for 17 months, prima facie involvement of the Applicant can be inferred from the fact that Applicant remained in contact with Accused No.2 – Amolik. It is also claimed that Applicant and said Accused No.2 – Amolik frequently used to attend office of Accused Suresh Bijlani, so as to plan execution of crime. According to Ms. Pai, after execution of crime on 16/2/2013, Applicant passed on information about the same to Accused Suresh and as such complicity of the Applicant can be inferred. She further claimed that Applicant would intimidate prosecution witnesses and might threaten them to depose falsely in

support of the case for acquittal. The learned Special Public Prosecutor then would urge that pendency of the Application for bail at the behest of the Applicant has delayed trial and according to her, new Presiding Officer will be making every endeavour to decide the trial expeditiously, as it is prosecution out of 199 witnesses has examined 66 and intends to only examine about 25 more.

10] Counsel for the complainant also tried to assist the learned Special Public Prosecutor in the matter of submissions that already proceedings are taken out for cancellation of bail of the co-accused Suresh and Anurag which are pending adjudication.

11] Considered submissions.

12] On 13/10/2017, at the behest of the co-accused Anurag, Apex Court directed the Trial Court to decide the trial on day-to-day basis and granted liberty to the Accused to approach the Trial Court for grant of bail, if charges are not framed and prosecution witnesses are not examined. In spite of the above order, since the trial was not concluded, Division Bench of this Court in Writ Petition No.4617 of

2018 further reiterated conducting of the trial on day-to-day basis.

13] Similarly, again, vide order dated 9/8/2019 in Writ Petition No.3312 of 2019 having noticed that trial is not concluded, expeditious disposal directions were reiterated by the Division Bench. Similarly, again in Writ Petition No. 539 of 2020 directions were issued by Division Bench vide judgment dated 1/3/2021 to proceed with the trial expeditiously on day-to-day basis.

14] The present Applicant thereafter moved before the Apex Court in SLP (Crl) No.2739 of 2020 which was disposed of vide order dated 19/6/2020 wherein it was clarified that bail application of the present Applicant be heard without being influenced by the order passed in Writ Petition No.539 of 2020.

15] Misc. Application No.1181 of 2020 was moved in the aforesaid SLP (Crl) No.2739 of 2020 at the behest of Sandeep Sunil Kumar Lahoriya. The Apex Court granted liberty to the Petitioner to file Bail Application in the High Court of Bombay which was directed to be decided expeditiously.

16] In the aforesaid backdrop, as Division Bench of this Court about more than 5 times has already directed the Sessions Court to decide the trial expeditiously on day-to-day basis and since the Special Public Prosecutor out of 333 days remained absent for 213 days which has resulted into delay in conducting trial and trial was conducted only for 120 days, it appears that prosecution has to be held responsible for delaying the trial. Based on aforesaid background, co-accused Anurag and Jawahar Chellaram Bijlani @ Suresh Bijlani who happened to be real brother of the Applicant were directed to be released on bail by the order of the Sessions Court dated 14/1/2020.

17] While directing release, Sessions Court has categorically made observations about default on the part of the prosecution to conduct trial on day-to-day basis which has prompted the Trial Court to adjourn the matter time and again. Apart from above, while granting bail to co-accused, Trial Court dealt with the role attributed to the co-accused Suresh Bijlani and threat to the deceased Sunil from the co-accused. Trial Court has considered that the said co-accused persons were behind bars for more than six and half years, which appears to be

the case similar to the Applicant who is behind bars for more than seven years. Complicity of the Applicant in the case is based on circumstantial evidence and trial is not likely to complete in recent future.

18] Though the learned Special Public Prosecutor has stated that Applicant in spite of liberty granted by the Apex Court on 9/7/2020 has approached late for grant of bail, this Court is required to be sensitive to the order passed by Division Bench in pending Writ Petition and steps taken by the Applicant to approach the Apex Court in the said matter.

19] For the aforesaid reasons, in my opinion, Applicant deserves to be released on bail.

20] Applicant is directed to be released on bail in Sessions Case No.281 of 2013 arising out of C.R. No. 67/2013 registered with Vashi Police Station for the offence punishable under Sections Sections 302, 201, 120B of the Indian Penal Code read with Sections 3(25), 3(27) and 4(25) of the Arms Act, upon furnishing P. R. Bond in the sum of

Rs 1 lakh with one or more local solvent sureties in the like amount. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence. Applicant shall regularly and punctually attend day-to-day hearing of the trial, unless expressly exempted by the Trial Court. Applicant to surrender his passport to the Sessions Court and shall not leave jurisdiction of the Court without prior permission. Applicant shall furnish address of his permanent place of residence and contract numbers while executing P. R. Bond to the Investigating Officer.

21] Application stands allowed in the aforesaid terms.

22] At this stage, learned Special Public Prosecutor submits that order granting bail be stayed for a period of four weeks so as to enable the prosecution to question the order granting bail.

23] I do not see any convincing reason which warrants grant of such prayer of learned Special Public Prosecutor, particularly when the order dated 14/1/2020 by which co-accused have been ordered to be released on bail, is not questioned by the prosecution till this date.

24] Apart from above, fact remains that it is the Apex Court which has granted liberty to the Applicant to move for grant of bail.

25] In that view of the matter, aforesaid prayer for stay stands rejected.

(NITIN W. SAMBRE, J.)