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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1433 OF 2019**

Mr. Gulrez Hasan Nazim Ali
@ Guddu @ Raju @ Gulrej
Najimali Jafari

....Applicant.

V/s

The State of Maharashtra

..... Respondent

Mr. Ashok M. Saraogi i/b Siddharth Jaiswal for the Applicant.

Mr. A.R. Patil, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 31, 2021

P.C.:-

1] In Crime No.222 of 2006, Applicant is seeking pre-arrest bail wherein offence is punishable under Section 302, 307, 212, 120B read with Section 34 of the Indian Penal Code and Sections 3, 25, 27 of the Arms Act.

2] This Court vide order dated 5th July, 2019 has granted ad-interim protection in favour of the Applicant.

3] Prosecution case is already narrated in the order dated 5th July, 2019 at the time of granting ad-interim protection.

4] The allegation against the present Applicant is, on 16th October, 2006 at around 12.40 P.M. at M.G. Road, Kalaghoda Junction, accused Nos. 1 and 2 committed an offence in question, thereby causing death of Amazad Khan and Himanshu Chaudhary with the help of firearm. Applicant is shown to be one of the co-accused in the said crime and it is claimed that he was since then absconding. Accused Nos. 1 and 2 after trial were acquitted by the learned Sessions Judge on 19th May 2009 in Sessions Case No.411 of 2007. Amongst other points which were considered by the Sessions Court are as under:-

“POINTS

1. Whether prosecution proved that on 16/10/2006 at 12.30 p.m. near Esplanade Mansion, M.G. Road known as Kalaghoda Junction, Amjad Hussain Khan and Himanshu Choudhary met with homicidal death?
2. Whether it is proved that accused Jafar Khan @

Malik Abbas Raji Alam Khan and accused Osama @ Rahul Roy Shahabuddin Khan alongwith absconding accused Vishnu Ranjan @ Vishal Gupta, Saurabhchand Premchand Sinha @ Sonu, Raju @ Guddu @ Gulrej Najimali Jafari, Pappu, Danny Nepali @ Dada @ Hani @ Ganesh Ram as well as alongwith Suresh Shetty illegally agreed to procure illegal fire arms by illegal means and take steps in pursuance of illegal agreement and conspiracy and thereby committed an offence u/s. 120(b) of IPC?

3. Whether it is proved that accused nos. 1 and 2 alongwith absconding accused in pursuance of aforesaid conspiracy i.e. to commit murder of Amjad Hussain Khan and Himanshu Chaudhary and alongwith wanted accused by making use of firearms by causing death of the above two persons with intention and knowledge that in case of use of firearms on the person of Amjad Khan and Himanshu Choudhary made use of firearms and caused their death and committed an offence u/s. 302 r/w 120(b) of IPC?

4. Whether it is proved that on the aforesaid date, time and place accused nos. 1 & 2 alongwith

absconding accused fired on Milind Khot who was trying to chase and apprehend them and that accused with intention and knowledge alongwith their associate in crime by firing from revolver on the person of Milind Khot attempted to cause his death and thereby committed an offence u/s. 307 read with Section 34 of IPC ?”

As far as aforesaid points are concerned, in point No.2, it has been specifically referred as to whether Applicant was part of the act of procuring illegal firearms by illegal means in pursuance to the conspiracy hatched and thereby committed an offence under Section 120(b).

5] The said point was answered on merit after appreciating the evidence. It appears that the role attributed to the Applicant in the said offence is that of procurement of fire arms and not active participation in the act of shooting firearms. Firearms, as has been claimed, were not seized and produced in the crime in question. It is the case of the prosecution that while investigating Crime No.538 of 2006 registered with D.N. Nagar Police Station, involvement of the Applicant in supply

of fire arms was noticed.

6] Fact remains that aforesaid acquittal of accused Nos. 1 and 2 is not questioned by the prosecution in appeal.

7] Fact remains that the Applicant remained absconding in the crime in question. His conduct is tried to be relied on. However, in response to the Court's query, learned APP is unable to explain the action, if any, taken against the Applicant by declaring him as absconding accused and further action under Section 82 of the Cr.P.C. As such, the contention that his bail application is liable to be rejected cannot be accepted.

8] Having regard to the fact that already main accused Nos. 1 and 2 are acquitted, seizure of the firearms in the present crime so also necessary ingredients of offence under Section 120B of conspiracy are not established and the fact that Applicant is on ad-interim protection since last two years, in my opinion, case for confirming pre-arrest bail is made out.

9] Application as such stands allowed.

10] In the event of arrest, Applicant be released on P.R. bond of Rs 50,000/- with one or two sureties in the like amount. Applicant shall attend the Investigation Officer of the concerned Police Station as and when directed. He shall submit his contact numbers and permanent place of abode to the Investigating Officer within a period of two weeks from today.

(NITIN W. SAMBRE, J.)