

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2605 OF 2019

Ajaykumar Harishankar Pal	.. Applicant
Versus	
The State of Maharashtra	.. Respondents

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Mr. Rajendra Rathod for the applicant.
Mr. Vaibhav Bagade, Special P.P with Ms. S.S. Kaushik, APP for
the State

CORAM: BHARATI DANGRE, J.
RESERVED ON : 24th MARCH 2021
PRONOUNCED ON : 16th APRIL 2021.

P.C:-

1 The applicant is seeking his release on bail in C.R.No. 249 of 2018 which came to be registered by invoking Section 302, 307, 120-B of the IPC and Sections 3, 25 and 27 of the Indian Arms Act. The applicant is arrested in the said C.R. on 21st April 2019 and the submission advanced by the learned counsel on behalf of the applicant is he has been falsely implicated in the said C.R and there is no material in the charge-sheet sufficient to sustain his conviction and therefore, he is entitled for being released on bail.

2 Heard Mr.Rajendra Rathod, learned counsel for the applicant and the Mr.Vaibhav Bagade, learned Spl.P.P.

3 The process of criminal law was set into motion by complaint filed by Mr.Omkar Sachin Sawant, resident of room no.237, Ganesh Kripa chawl, Durga Nagar, Kandivali (East). He averred that his father Sachin Vasant Sawant was an active member of Shiv Sena and was in-charge of Branch No.39, and was assigned post of Sub Branch Head, (*Upshakha Pramukh*). He state that the rehabilitation work of the chawl in which he was residing was in progress since last 11 years and his father was working as a promoter of the SRA formed for the said purpose, which had entrusted development work to Akash Developers. He was also working for Akash Developers and receiving salary from them. According to the complaint, the project involved 1300 houses, out of which 820 occupants had accorded their consent for redevelopment, whereas about 100 to 125 people were in opposition.

On 18th April 2018, his father had organized Bhumi Pujan of the project of Akash developers and the banners to that effect were posted in the locality. However, those in opposition of the project had pasted their banners and therefore, a verbal spat had taken place in the two groups. The dispute landed in the police station and the police had asked both the parties to pull

over the banners and the dispute was resolved. The Bhoomi Pujan took place as scheduled on 18th April 2018 peacefully.

4 The complaint referred to a prior incident of 2009 when his father was injured in firing and the cause for the attack was an SRA project and the concerned persons came to be arrested. Reference is then made to an incident dated 22nd April 2018 when his father had left from the house on the pretext of attending the meeting of Shakha No.39 and the complainant received a phone call from his friend that his father had been shot and when he reached the spot, he noticed his father lying in a pool of blood in front of a General Store. On inquiry, it was informed to him that his father was returning home on the motorcycle of one Jagannath Verma and when he was a pillion rider, two persons had stopped him and fired at him by means of weapons they were holding. His father was taken to the hospital where he succumbed to the injuries.

5 In connection with the said C.R, the applicant along with six other accused came to be arrested and the Investigating Officer of the Kurar police station filed a charge-sheet against them on 4th August 2018. The key accused Umesh Shahani was declared as absconding. During the course of investigation, two of the accused Abhay @ Barkya Kiran Patil and one Lokesh Singh came to be identified as the assailants by three witnesses. The

statement of Jagannath Verma, who is an eye witness to the incident, came to be recorded and he disclosed that Sachin Sawant requested him to drop him home, and since he was acquainted to him as he was working for the builder, he readily agreed while they were coming out of the office of Shiv Sena Shakha, somebody asked them to stop and the deceased asked him to bring the motorcycle to halt. At that time, one person who was standing at his right side fired at Sachin by means of a revolver, which hit him on his chest and the other person also attempted to fire, but since his weapon did not operate, he was not able to do so. The said witness had identified the assailants.

6 Pertinent to note that in the same C.R, the investigation further progressed and a supplementary charge-sheet came to be filed after the arrest of the accused Umesh Sahani who was absconding. He was arrested on 17th March 2019 and during his interrogation, he led to the house where the conspiracy to kill the deceased was executed and by drawing the panchnama, the said house was inspected.

7 Learned APP has placed on record the supplementary charge-sheet filed on 5th March 2019 which refer to the recovery from the present applicant, Ajaykumar Harishankar Pal @ Pintu. The recovery is of one mobile phone with two Sim cards of Vodafone company along with 8 GB memory card. There is also

a recovery of country-made pistol with the words “made in China” inscribed on it at the instance of the present applicant along with three live cartridges. The said recovery is effected in the disclosure statement of the applicant on his arrest.

8 The charge-sheet allege that the applicant is the brother of accused Sonu Pal who had provided weapons for killing Sachin Sawant and who has conducted Reki in the area where Sachin Sawant was residing. However, since Sachin Sawant could not be killed, the present applicant had withdrawn the weapons handed over to his brother and it is the applicant who is alleged to be the provider for weapons which were weapons to kill the deceased. Under the disclosure statement, he led the investigating team to the place where the weapon and live cartridges were concealed by him in a public toilet located near Narmadabai Patil Chawl, Pandurang Nagar, Nallasopara. The weapon and live cartridges were found to be concealed in the said toilet in the gap located between the cement ceiling and the wall of bricks, and was found placed in the open space between the two and the applicant by placing his hand inside the said vacuum took out a plastic bag in which the recovered article were wrapped in a gujarati newspaper which was recovered under a panchnama. On the said newspaper, the following names were found to be inscribed in handwriting and these names were inscribed along with the telephone numbers as of Barkya, Nilesh, Amit, Umesh.

The specimen of the handwriting of the applicant was obtained and forwarded to the handwriting expert and the handwriting expert opined it to be the handwriting of the present applicant. The charge-sheet also compiled the CDR reports which have been brought on record through the statement of the service provider.

9 The applicant came to be arrested after one year of the incident when on the earlier occasion, charge-sheet was filed against seven accused persons. On his arrest, on 24th April 2019, the mobile phone which was seized from him, contained five photographs of the fire arms, picture of co-accused Sonu Pal along with a gun and a picture of co-accused Brijesh Singh. An SMS message from Nilesh from his mobile 8898322706 is also retrieved. Though this message *per se* may not be incriminatory but the connection between the applicant and co-accused Nilesh, is apparent. Further, a picture of Sonu Pal, Nilesh Sharma and Amit Singh under the caption of 'Harhar Mahadev' group is also retrieved. There is also a chat in the chat box referring to the purchase of fire arms dated 17th April 2019 and the screenshot of which has been compiled in the charge-sheet after obtaining the necessary certificate under Section 65B.

10 In light of the incriminating material against the applicant, I have no hesitancy in believing the case of the prosecution, *prima facie* having sufficient material to charge the

applicant and since the nature of the offences and its gravity being serious one, pending the trial, I am not inclined to release the applicant on bail.

Bail Application is therefore, rejected.

11 Needless to say that the observations made are relied on decision of the present application and the Special Court will not be influenced by the said observation during the course of trial.

SMT. BHARATI DANGRE, J