

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

BAIL APPLICATION NO. 3225 / 2019

**ALONG WITH
INTERIM APPLICATION NO. 76 OF 2020**

Satish Baban Shinde

Age : 35 years, Occ: Service

Residing at : Room No.3,

Shewantabai Chawl,

Nerurkar Road, Dattanagar

Dombivali (East)

At present in custody of

Adharwadi Prison, Kalyan

.....Applicant

: V E R S U S :

The State of Maharashtra

(At the instance of Senior Police

Inspector, Dombivali Police Station)

....Respondent

* * * *

Mr. Rajiv Patil, Senior Advocate a/w. Ms. Sangeeta Salvi
i/by. Hasan Patel, Advocate for the Applicant.

Mr. M.S. Kocharekar a/w. Mr. Shailesh D. Chavan,
Advocate for the Intervenor.

Ms. Sharmila Kaushik, APP for State.

API, Ajit Jadhav and PN S.H. Pichad, from Dombivli
Police Station present.

CORAM : SANDEEP K. SHINDE, J.

RESID ON : 4th MARCH, 2021.

PRON ON : 17th MARCH, 2021.

P.C. :

1. Heard learned Counsel for the applicant, Intervenor and learned APP for State.

2. The applicant, seeks his enlargement on bail in connection, with Crime No.I-114/2017 registered with Dombivali Police Station for the offences punishable under Sections 302, 307, 364, 452, 120(B), 201, 143, 144, 146, 147, 148, 149, 323, 504, 506, 506(2) of the Indian Penal Code and under Sections 3(25), 27 and 30 of the Arms Act.

3. Briefly, the allegations are that, the members of the unlawful assembly in prosecution of the common object shot dead, Kishor Chaudhari by pumping 20 bullets into him and severely injured, Nitin Joshi by bullet injuries.

While leaving the scene of offence, members of assembly, abducted, Mahima Wilson, co-worker of Kishor Chaudhari in a Scorpio/Innova Car. His body was traced and found at Mahabaleshwar in mutilated condition, at the instance of one of the accused. Deceased, Kishor Chaudhari was a small-time Interior Decorator/Contractor. Nitin Joshi and Mahima Wilson were assisting him in his business. Bhoir family was also in the same business. Bhoirs' had threatened, Kishor Chaudhari to discontinue the business in/or around Thakurli-Dombivli area. At the material time i.e. in May, 2017, Chaudhari was doing interior work in a flat in Shivamrut Society at Thakurli. He was warned by accused, Dilip Bhoir to abandon the work. However, Chaudhari did not budge. Infuriated Dilip Bhoir and his brothers hatched a conspiracy to eliminate Kishore Chaudhari. On 9th May, 2017, Shankar Bhoir, Dilip Bhoir, Suraj Bhoir, Sagar Bhoir, Vishal Bhoir ("Bhoirs" for short) and other 10 to 15 persons reached Shivamrut Society in two cars. It appears, Bhoirs' entered the Flat, where

Kishor Chaudhari and his workers were doing the civil work. All were armed with revolvers. Twenty bullets were fired, at Kishor Chaudhari to which he succumbed on the spot. Bullets were shot at, assistant, Nitin Joshi but he survived; whereas, Mahima Wilson, co-worker of Kishor Chaudhari was abducted by the members of unlawful assembly in a car, whereafter his body was found at Mahabaleshwar. The incident was reported. Following that, the subject crime came to be registered. Applicant is accused no.10.

4. Mr. Patil, learned Senior Counsel for the applicant submits that, investigation is over and final report has been filed, but till date, the trial has not commenced. He submits that, applicant was arrested in May, 2017 and for trial, his presence can be secured by imposing conditions. It is submitted, that there is no evidence to connect the applicant to the alleged offences. He further submits that, the applicant had not entered in

the, flat where Kishor Chaudhari was shot dead. Mr. Patil, submits, assuming the applicant was found present in the nearby vicinity but this, itself is not sufficient to rope the applicant in the crime. It is submitted that, since co-accused (Ajay Walimiki) against whom similar allegations were made, has been released by this Court (Coram : Hon'ble Justice Shri. A.S. Gadkari), applicant may also be released.

5. Per-contra, the learned APP, vehemently opposes the application. It is submitted that applicant's presence on the spot was captured in the CCTV cameras. The panchanama of the CCTV footage, clearly shows, the presence of the applicant with the assailants Bhoir's on the day of the incident, throughout, right from their house to the spot of the incident. It is submitted that, FSL report of the CCTV footage was made available on 28th May, 2020 i.e. post grant of bail to Ajay Walmiki. It is submitted that, the applicant was the Bodyguard of co-accused, Sagar

Bhoir. It is also submitted that, whereabouts of a labour, who was present at the scene of offence are not known. Apprehension is, that if the applicant is released on bail, he may tamper the evidence.

6. **Reasons:**

. In the case of **Gurbaksh Singh Sibbia and Ors. V/s. State of Punjab**, reported in **1980 (2) SCC page 565** (para-30), the Constitutional Bench of the Hon'ble Supreme Court has held, bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail.

7. In the case at hand, two persons have been murdered i.e. Kishor Chaudhari and Mahima Wilson and one Joshi, sustained the fire arm injury. The statement of Nitin Joshi (injured) recorded on 17th May, 2017 reveals that, at the material time, Bhoirs' and one unknown person entered the room. He revealed, Dilip opened fire on

Kishor Chaudhari and when he fell down, Dilip, Shankar, Sagar and Vishal opened fire and shot about 22 to 25 bullets on Kishor Chaudhari. Thus, the statement of Nitin Joshi, prima-facie, may not show the presence of applicant in the room/flat, where incident had taken place. However, the CCTV panchanama supported by Certificate under Section 65-B of the Evidence Act, not just shows presence of the applicant at the Society premises but his association with the accused Bhoirs' at their office since morning. The footage-folder of Camera-B shows applicant's presence at 11:32 a.m. near the house/office of the accused, Bhoirs', wherefrom accused proceeded in two vehicles to the spot. At 11:40 a.m., applicant's presence was captured in Folder of Camera No.8 near Shivamrut Society with co-accused Aakash K. Waghera. Folder in Camera No.7, shows that around 12:00 to 00:36 hrs, applicant was found present in the compound of Shivamrut Society with Shankar Bhoir, Sagar Bhoir, Vishal Bhoir and Ashok Kalicharan Valmiki. Thus, the CCTV footage shows, not only the presence of

the applicant as onlooker or by-stander, but, shows his association with the assailants. It appears from the evidence, the office/residence of the Bhoirs' was near the spot of the incident. The 62nd folder of Camera-17 shows, applicant was coming out of the premises of the Shivamrut Society with the assailants and proceeding to Innova and Scorpio Car wherein Mahima Wilson (deceased) was abducted. In view of this evidence, the statement of Rana, a Peon working in the office of Bhoirs' is relevant. He stated, the applicant was a Bodyguard of Sagar Bhoir (accused no.2). Thus, the evidence, *prima-facie* suggests, he had knowledge, that Bhoirs' hatched the conspiracy to murder Kishor Chaudhari. Admittedly, in Test Identification Parade, held on 11th July, 2019, applicant was identified by witnesses whose statement was recorded on 9th May, 2017. In spite of it, he chose to remain in the company and associated with Bhoirs' since morning. Therefore his, presence, before, after and during the incident, *prima-facie*, suggest he was sharing the common

object of unlawful assembly. In the light of this evidence, reliance placed on the judgment of the Apex Court by the prosecution, in the case of **Kattukulangara Madhavan (Dead) through Legal Representatives Versus. Majeed and Others, (2017) 5 Supreme Court Cases 568** is appropriate, wherein, Hon'ble Apex Court in para-23 has observed thus :-

“23. In the first place, the presence of an accused as part of an unlawful assembly, when not as a curious onlooker or a bystander, suggests his participation in the object of the assembly. When the prosecution establishes such presence, then it is the conduct of the accused that would determine whether he continued to participate in the unlawful assembly with the intention to fulfill the object of the assembly, or not. It could well be that an accused had no intention to participate in the object of the assembly. For example, if the object of the assembly is to murder someone, it is possible that the accused as a particular member of the assembly had no knowledge of the intention

of the other members whose object was to murder, unless of course the evidence to the contrary shows such knowledge. But having participated and gone along with the others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:-

1. What was the point of time at which he discovered that the assembly intended to kill the victim?
2. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?
3. If he did, and failed, did he dissociate himself from the assembly by getting away?

The answer to these questions would determine whether an accused shared the common object in the assembly. Without evidence that the accused had no knowledge of the unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after having failed to do so, the accused

disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory”.

8. Thus, to be stated that the conduct of the applicant would be a relevant factor to ascertain whether he was a curious onlooker or had participated in the object of the assembly. The evidence clearly suggest that the accused Bhoirs' were armed with revolvers. Prima-facie, this fact was within the knowledge of the accused because he was the Bodyguard of one of the accused. The applicant was present near the house of Bhoirs' before the incident and in his presence, accused Bhoirs' proceeded in two cars at the spot. At the material time, the applicant-accused was present in the compound of the Society. Therefore, it is to be inferred that, he had knowledge and participated in common object of assembly i.e. to murder, Kishor Chaudhari. Yet, there is no evidence to suggest that, he attempted to stop the assembly from pursuing the object.

Similarly, no efforts were made by the applicant to disassociate himself from the assembly by getting away.

9. In consideration of the facts of the case, material on record, gravity of offence, the manner in which Kishor Chaudhari was murdered, a co-worker was injured and another was abducted and killed, in my view, it is not a fit case to enlarge the applicant on bail. Application is rejected and dismissed accordingly.

10. With dismissal of the application, the Interim Application No. 76/2020 becomes infructuous and does not survive. The same is disposed of.

11. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of rejecting bail only and the same shall not, in any way, influence the trial in other proceedings.