

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3488 OF 2019

Brijesh Nathuram Patel	.. Applicant
Versus	
The State of Maharashtra	.. Respondents

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Mr. Ashok M. Saraogi 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 Being charge-sheeted in C.R.No.249 of 2018 registered under the provisions of Section 302, 307, 120-B of the IPC and Sections 3, 25 and 27 of the Indian Arms and subsequently invoking the provisions of MCOCA, the applicant seek his release on bail. He came to be arrested in relation to the said C.R. on 8th May 2018.

2 Heard Mr.A.M. Saraogi, learned counsel for the applicant and the Mr.Vaibhav Bagade, learned Spl.P.P.’

The learned counsel for the applicant state that the applicant is incarcerated for more than three years and if the charge-sheet is perused, no role is attributed to him in the entire episode and with a more serious role, one of the co-accused Mr.Brijesh Singh is released on bail by this Court on 20th February 2019. The learned Spl.P.P however, invite my attention to the relevant portions of the charge-sheet and the material compiled therein, indicting the present applicant and his submission is the said offence is a serious one where the provisions of MCOCA have been invoked after being satisfied that the role of Organized Crime Syndicate has been made out and the applicant being one of its members is arrested and charged for a serious offence. Initially, according to him, the offence was registered under Section 302 for committing the murder of one Sachin, but subsequently when the investigation was conducted by the Joint Commissioner of Police, it revealed that the offence was committed as an Organized Crime Syndicate and pertinent to note that two charge-sheets have been filed and till date, there are nine accused who have been framed and arrested in relation to the said crime.

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 On the basis of the said complaint, C.R came to be registered under Section 302, 34 of the IPC. It was also alleged that in the said incident, a passer-by was also injured.

6 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.

7 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.

8 Since the case of the prosecution as contained in the charge-sheet is based on a conspiracy being hatched to kill the deceased Sachin, by way of contract killing, the evidence compiled in the charge-sheet is in form of CDRs. The mobile number of the accused persons had been compiled and this include the mobile number of the present applicant being 8898882920 and the CDRs of the said mobile number from 1st June 2017 to 31st May 2018 were collated and compiled in the charge-sheet. The sim in the mobile phone of the applicant in

his name and the necessary form addressed to the service provider was obtained. The witness who provided the detail information is the Nodal Officer of Vodafone Company, the service provider and on being specifically inquired about the details of the aforesaid number, he has established that 43 calls were made from this number to the co-accused Nilesh Sharma and he was in contact with the said person. On 22nd April 2018, the location of the said Sim card was at Beverley Park, Opposite Cinemax, Mira Road, District Thane and from 22nd April 2018, the mobile was operational in Uttar Pradesh. A statement of the witness reflect that mobile No. 9702218426 was used by Nilesh Sharma, the co-accused.

9 The prosecution has included the statement of one Raju Thakare in the charge-sheet who has confessed to be acquainted with Umesh Sahani while Umesh was undergoing a sentence in the offence of murder. He was acquitted of the charge of murder in the year 2014 and when he visited Nallasopara, he came in contact with Umesh Sahani who put a proposal before him for investing some amount in the business to which the witness subscribed and therefore, he remained in touch with Umesh Sahani on the mobile number provided by him. The said witness with the assistance of Umesh Sahani, opened a Chinese Hotel and that is how he became acquainted with the friends of Umesh Sahani being the accused Abhay Patil @ Barkya, Amit

Thakur, Manish Singh, etc. In the year 2017, the hotel was required to be closed down on account of some unfortunate incident when the customer was beaten and thereafter, Umesh Sahani started working in a factory and the said witness was engaged in one shop but they were in touch with each other on telephone. He report of the fact that in April 2018, Umesh Sahani left the said job and he met the said witness at Malad, Kurar and expressed his dire need for work and an arrangement to stay. He report of an incident when he consumed liquor with Umesh in his room and when he inquired as to what work he is engaged in, he divulged to him that a work has been entrusted to him where one person has to be killed and for carrying out the said work, an amount of Rs.Three lakh is to be received. He also disclosed that co-accused Sonu Pal had allotted him a room in Kurar and he is sharing the said room with Abhay Patil @ Barkya and in the said room, the meetings are taking place which is attended by Brijesh Patel, Brijesh Singh, Nilesh Sharma, Sonu Pal, Abhay Patil and Umesh Sahani. The witness disclose that he was acquainted to Abhay Patil @ Barkya and Sonu Pal and reiterate the involvement of the present applicant along with Brijesh Singh and Nilesh Sharma has been divulged to him by Umesh Sahani himself.

10 The above statement is reflective of the conspiracy that was hatched for killing Sachin, deceased and though the

details of the meetings, according to Mr.Saraogi, and the manner in which the conspiracy has been hatched are not disclosed, the statement at this stage, is sufficient to refer to a conspiracy as the combination of the accused persons whose names are specifically taken by the said witness as the co-accused in the said crime. In any case, the conspiracy which is hatched in darkness would have to be proved by positive evidence at the time of trial, but the statement of Raju Thakare along with the CDRs which reveal that the applicant was in contact with Nilesh Sharma, is sufficient to establish his complacency in the said C.R. Further, the CDR indicate that the applicant and the co-accused were together at the same place on 12th April 2018 where the meeting had taken place and this includes the applicant along with Brijesh Singh, Nilesh Sharma and Sonu Pal. The supplementary charge-sheet contains the statement of the Nodal Officer of the service provider which also reveals that even on the day and the day prior to the incident of attack, the accused persons were in touch with each other. The CDR also reflects that the applicant immediately left for U.P via M.P and his movement was traced through the CDR analysis and statement of the Nodal Officer is compiled in the supplementary charge-sheet.

11 The submission of Mr.Saraogi is that there was a marriage in the family and therefore, he had been to Uttar Pradesh to attend the said marriage, is a factor which will have to

be considered and proved at the time when the applicant is tried for the offence with which he is charged since his conduct, subsequent to the crime will be a relevant circumstance.

12 Reliance placed by Mr.Saraogi on the order dated 20th February 2019, passed by Hon'ble Justice Prakash Naik while dealing with the application by Brijesh Singh is of no assistance to me. The said applicant has been indicted on the ground that he was one of the persons who was opposing the redevelopment project and though there was a recovery at the instance of the applicant, the Court recorded a *prima facie* finding that the applicant was deputed to collect the amount towards payment of purchase of house and the statement of Rajesh Sarda recorded on 9th May 2018, refer to the fact that amount of Rs.3 lakhs was given to the applicant on instructions of Brijesh Patel. On this ground, the applicant was admitted to bail. The indictment of the present applicant surfaces from the charge-sheet vide the CDRs which have been brought before the Court by way of supplementary charge-sheet which is filed on 5th March 2019 and it is apparent that when the order was passed on 20th February 2019, the evidence in form of CDR and the connectivity between the co-accused was not placed before the Court since it was not available then.

13 The involvement of the other co-accused persons i.e. Sonu Pal, Nilesh Sharma is fortified by various discoveries, and the connection of the applicant with Nilesh Sharma is clearly established in the supplementary charge-sheet. The material, therefore, clearly lead to a conspiracy and the applicant being a part of the conspiracy. The offence being serious one where the deceased was done away by resorting to the method of contract killing on account of the dispute in the SRA project, considering the gravity of the offence, the applicant do not deserve his freedom at this stage, and the application filed is accordingly rejected.

14 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