

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 BAIL APPLICATION NO.464 OF 2022

KARANSINGH CHANDRAPALSING GAHERWAL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Ostwal Abhaykumar Dilip
APP for Respondent-State : Mr. S. B. Narwade.
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CORAM : S. G. MEHARE, J.
DATE : 06.07.2022

PER COURT :-

1. Heard the learned counsel for the applicant and learned APP for the respondent-State.
2. Learned counsel for the applicant would submit that there is no evidence at all against the applicant that he has plotted the conspiracy to commit the murder. The C.D.R. evidence is the weakest piece of evidence. Referring to the various statements of the witnesses, he has argued that none of the witnesses has stated that any time the present applicant sent his brother to threaten the witnesses from the family of the complainant that if they did not take the murder case back, their life would be in danger. He has vehemently argued that most of the accused against whom the serious allegations have

been made, particularly the main conspirator, are also released on bail. He would point out that initially, when the report was lodged, it was informed to police that it was an accidental case. The record supports his contention. He has vehemently argued that whatsoever the C.D.R. details have been collected by the Investigating Officer do not reveal that there was a communication between the applicant and his brother. Whatsoever the C.D.R. record is collected, it pertains to the three months before the incident. The investigation is based on suspicion that Pooja, the alleged main conspirator, has sold her ornaments to pay the money to the contract killer. The amount of Rs.1,50,000/- has been recovered from one of the co-accused, and he has also been released on bail. Whether the death is homicidal or not is a question of fact that can be ascertained by appreciating the prosecution evidence. The prosecution has no evidence that the main conspirator Pooja met the co-accused in jail at any point in time. The jail visit register reveals that she either met his brother or father, who was behind bars for the offence of murder. In the absence of direct evidence, at least sending his brother to threaten the complainant's witnesses to take the murder case back against the family of Pooja, the applicant may be released on bail. The memorandum statement under Section 27 is not evidence

except for the discovery at the instance of the person making such statement. The witnesses have made a bare allegation that the applicant is the conspirator.

3. It has also been argued that the applicant has been behind bars since 16.01.2020. The prosecution has discharged a few of the accused after registering the crime on the statement of the witnesses. This shows that the first informant and witnesses were not sure who was actually involved in the crime. The statement might have been made on hearsay or surmises. Howsoever the suspicion is strong. It cannot take the place of proof. He also added that the charge sheet is filed. There is no substantial evidence to link the applicant to the alleged conspiracy. Therefore, he may be released on bail.

4. Learned APP referred to the affidavit-in-reply filed by State and would vehemently argue that Pooja had arranged the money to pay to the contract killer. She had sold her golden ornaments, and there is evidence that the money was paid to one of the co-accused. There are witnesses stating that the applicant was in jail, and his brother Govind threatened them to take the case of murder back; otherwise, their life may be in danger. He has strongly relied on the C.D.R. and argued that

there was consistent communication on the phone. This strong circumstance is sufficient to *prima facie* hold that the applicant was one of the conspirators committing the murder of the deceased. Admitting the factum of the release of most of the accused, he prayed that the role played by the applicant was different from the role played by them. Therefore, the applicant shall not be released on bail.

5. The papers attached in the charge sheet revealed that at the very first stage after the incident, a report was lodged that it was an accidental case. Subsequent there to a case was developed that the co-accused were threatening the deceased to take the case back. Therefore, to disappear the evidence, the murder has been committed. Statement of witnesses barely reveals that the applicant was in jail, and his brother Govind went to the house of witnesses and threatened them to take the murder case back against the co-accused else their life would be in danger.

6. Learned counsel for the applicant has referred to the various bail orders passed by this Court and the Court of learned Sessions Judge in the same crime. In each case, the Courts have recorded the findings regarding the role played by

each accused. Admittedly, the jail visit register relied upon by the prosecution does not disclose that co-accused Pooja met the applicant at any time. It has been alleged that one Constable, Mr. More facilitated Pooja to contact the contract killer through the applicant. But, it would be difficult to comment at this juncture that at any time, the present applicant contacted the contract killer and has plotted the conspiracy in jail, where the accused are under surveillance for 24 hours.

7. Be that as it may, the main charge against the accused is 'plotting the conspiracy'. The prosecution has remote evidence of C.D.R. The other co-accused, who have allegedly played serious roles in the offence, have been released on bail. This Court would not find it appropriate to go through the ingredients of criminal conspiracy. However, does not believe the prosecution case at this juncture that there was an agreement between all accused in jail for doing an unlawful act. No doubt, it is difficult to establish a conspiracy by direct evidence, but the circumstances should be strong enough to believe that the persons involved in the conspiracy were in agreement to commit the crime or unlawful act.

8. After having gone through the charge sheet and the papers submitted by the learned APP, this Court is of the view that the investigation is completed. The co-accused have also been released on bail. Therefore, there would be no propriety in keeping the applicant behind bars. The application deserves to be allowed. Hence, the following order :

ORDER

- (a) The application is allowed.
- (b) The applicant **Karansingh S/o Chandrapalsingh Gaherwal**, be released **on bail** on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties of the like amount in Crime No.382 of 2019, registered by Police Station M.I.D.C. Latur, District Latur, for the offences punishable under Sections 302, 120-B of the I.P.C. on the following conditions :
 - (i) He shall not involve in similar offences.
 - (ii) He shall not tamper with the prosecution witnesses.
 - (iii) He shall attend the trial on each and every effective date of hearing.

- (iv) He shall attend the Police Station as and when called by the Investigating Officer on written notice for material investigation.
- (v) The applicant shall not enter Latur City except for the purpose of the present trial till conclusion of the trial.
- (vi) Bail before the learned Sessions Court.
- (vii) Needless to state that these observations are restricted to this bail application only.
- (viii) *Humdast* allowed.

(S. G. MEHARE, J.)

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