

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 399 OF 2021

Somnath S/o Gopal Sathe

Applicant

Versus

The State of Maharashtra

Respondent

Mr. P. P. More, Advocate for the applicant.

Mr. S. B. Narwade, APP for the respondent/State.

WITH
BAIL APPLICATION NO. 736 OF 2021

Nishant Rajendra Jagtap

Applicant

Versus

The State of Maharashtra

Respondent

Mr. Chaitanya Deshpande, Advocate holding for Ms. Priyanka Deshpande, Advocate for the applicant.

Mr. S. B. Narwade, APP for the respondent/State.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 14th March, 2022.

PRONOUNCED ON : 31st March, 2022.

ORDER :

1. Both these applications are being disposed of by common order as they arise out of the same crime.

2. Facts leading to these applications in nutshell can be stated as under :-

Deceased Janardan Govindrao Sathe was the father of the informant. Akash Janardan Sathe was the brother of the informant. On account of property dispute, accused Vilas Govind Sathe and Gopal Govind Sathe (both uncles of the informant) and others committed murder of Akash Janardan Sathe on account of which Crime No. 14/2019 came to be registered and the said case is pending before the Sessions Court.

3. It is alleged by the informant that before Diwali festival, brother of Karansingh Gaherwal (accused) threatened the mother and sister of the informant to withdraw the sessions case otherwise they would be eliminated. After three days, Vishnu Pandhari Sathe, Dhanraj Nagnath Sathe and Prem Gyanba More gave similar threats to the informant and his father.

4. On 6th November, 2019, at 6.00 pm, deceased Janardan Sathe left the field for home on Jupiter Scooter. Informant was following him on motorcycle. A black colour Tata Safari car bearing

registration No. MH-12-DM-7378 overtook the informant. A little while later, he found that his father had fallen by the side of the road in injured condition and the Tata Safari car had gone off the road and got stuck in the swamp beside the road. Two boys alighted from the vehicle. One of them was having a knife. He ran away by brandishing the knife. Villagers chased the other one and caught him. He disclosed his name as Gaurav Kailas Lohar. Deceased Janardan was immediately shifted to the hospital where he was declared dead on arrival. According to the informant, Vilas Sathe, Govind Sathe and their family members are behind the bars in connection with Crime No. 14/2019. They hatched a criminal conspiracy to eliminate deceased Janardan Sathe. Accordingly, the main conspirator i.e. accused Pooja Sathe who is the daughter of Vilas Sathe hatched a conspiracy to commit the murder of the deceased Janardan Sathe. For that purpose, she took the help of her boy friend accused Rahul Jadhav and applicant Nishant Jagtap who is the maternal cousin (मावस भाऊ) of accused Rahul Jadhav. Accused Rahul Jadhav had given cash of Rs. 4,00,000/- to applicant Nishant Jagtap and the car involved in the crime was purchased. Accused Gaurav Lohar and the accused who ran away (whose name was later on disclosed as Ashish Jadhav) were given contract to kill

deceased Janardan Sathe. Accordingly, they had stayed in a lodge at Latur and executed the plan. Accused Ashish Jadhav was driving the Tata Safari car at the time of the incident. On these allegations, First Information Report came to be registered under Sections 302, 120-B of the Indian penal Code vide Crime No. 0382/2019 registered with MIDC Police Station, Dist. Latur against the present applicants and other accused.

5. Heard Shri More, learned counsel for the applicant in Bail Application No. 399/2021, Shri Deshpande, learned counsel holding for Miss Priyanka Deshpande, learned counsel for applicant in Bail Application No. 736/2021 and Shri Nawrade, learned APP for the State in both the applications.

6. Learned counsel Shri More and Shri Deshpande submitted that name of the applicants do not find place in the First Information Report. Initially, the Medical Officer in whose hospital the deceased was admitted, reported to the police station that it was a case of accidental death. On receiving information about the accident, police officers rushed to the spot. Hospital record and PM report also indicate that the deceased had sustained injury in a road

traffic accident. Both of them submitted that charge-sheet is filed. There is no need to detain the applicants behind the bars. They submitted that the main conspirator accused Pooja Sathe has been released on bail. Other accused by the name of Dipak Devendra Gavali, Sitaram Tukaram Gore and Govind Chandrapalsing Gahirwal have also been released on bail. They, therefore, submitted that there is no iota of evidence to indicate that conspiracy was hatched by the applicants and accused Pooja Sathe. They further submitted that none of the applicants has criminal antecedents. According to both of them, statements made by accused about conspiracy after their arrest are not admissible in evidence under Section 10 of the Indian Evidence Act. Reliance is placed on a case in the matter of State of Gujrat vs. Mohammed Atik and others reported in **1998 Cri.L.J. 2251**. They submitted that the entire story has been cooked up only after the arrest of the applicants and other accused. They submitted that the statements of accused are not admissible in evidence. They, therefore, sought release of the applicants on bail.

7. Learned APP Shri Narwade submitted that accused Pooja had sold her gold ornaments to a Jeweller by the name of M/s Tathavade & Sons, Latur to raise money for committing murder of

deceased Janardan Sathe. She handed over this amount to her boy friend Rahul Jadhav and asked him to hire some persons for killing the deceased. Cash of Rs. 1,50,000/- has been recovered from applicant Nishant Jagtap. He submitted that Rahul Tukaram Jadhav is the cousin brother of applicant Nishant Jagtap. Rahul Jadhav had given Rs. 4,00,000/- to Nishant Jagtap. Nishant Jagtap purchased a car bearing registration No. MH-12-DM-7378. He further submitted that amount of Rs. 1,50,000/- has been recovered at the instance of applicant Nishant Jagtap vide memorandum statement under Section 27 of the Indian Evidence Act. He further submitted that the plan was executed meticulously. On 4th November, 2019, at 4.00 pm, accused Rahul Jadhav had booked a room in New Nisarg Lodge, Latur alongwith accused Ashish Jadhav, Deepak Devendra Gawali and Prem More. He further submitted that on 5th November, 2019, at 10.20 pm, accused persons had checked in the hotel and they checked out the hotel on 6th November, 2019 at 5.10 pm and the accident occurred at 6.30 pm. He submitted that the RTO has given a certificate that there was no mechanical defect in the vehicle involved in the accident. He submitted that accused Pooja Sathe sold her gold ornaments to M/s Tathavade & Sons, Latur. She received cheque of Poornawadi Bank from the jeweller.

The Investigating Officer has collected the URD Purchase Bill issued by the jeweller. Statement of the jeweller has been recorded. On 16th October, 2019, Pooja deposited cheque in her bank account maintained with State Bank of India. On 22nd October, 2019, Pooja withdrew Rs. 2,00,000/- from her account. Again on 25th October, 2019, she withdrew amount of Rs. 2,00,000/-. On 26th October, 2019, she called Rahul at her home and gave Rs. 4,00,000/- to him and asked him to go to Pune. Rahul gave that amount to applicant Nishant Jagtap. Accused Ashish purchased Tata Safari car bearing registration No. MH-12-DM-7378 for Rs. 1,50,000/- and got it insured on 30th October, 2019. He further submitted that accused Rahul had booked room in New Nisarg Lodge, Latur. All the four accused stayed with him. On 3rd November, 2019, at 11.30 am, they checked out of the hotel. They checked in Holiday Inn hotel at 10.00 pm. They checked out the hotel at 12.00 midnight. Accused Pooja and Rahul met accused Nos. 1, 5, 6 and 17 at Vimantal Road. He further submitted that applicant Nishant and accused Ashish were in touch with each other since October, 2019. He submitted that this shows that it was a full proof plan executed by the accused to eliminate deceased Janardan Sathe as he refused to withdraw the sessions case pending in the Court.

8. I have given thoughtful consideration to the arguments of all the learned counsel.

9. Admittedly, there is property dispute between the informant and accused Vilas Sathe and Gopal Sathe. On account of property dispute, Crime No. 14/2019 has been registered against most of the family members of accused Pooja Sathe.

10. The only evidence against the applicants is that between 3rd November, 2019 to 5th November, 2019, they had booked a room in New Nisarg Lodge, Latur. The other evidence collected by the prosecution is in the nature of Call Detail Record (CDR). It was vehemently submitted that this CDR clearly shows involvement of applicant Nishant in the alleged offence. This aspect can be considered during trial. At this *prima facie* stage, it cannot be said that the conversation was with regard to the alleged conspiracy. There is nothing on record to show that the purchase of the vehicle involved in the incident was funded by applicant Nishant Jagtap. RC Book has been seized during investigation. The vehicle stands in the name of Ranjit Ganpt Gogawale. It is also insured in his name. Therefore, at this *prima facie* stage, it is difficult to accept that

applicant Nishant had financed purchase of Tata Safari car and accused Ashish Jadhav purchased it. It is pertinent to note that informant Namdeo Sathe while admitting his father i.e. deceased Janardan Sathe in the hospital had given history of road traffic accident which belies theory of conspiracy. So far as conspiracy is concerned, statements made by accused persons prior to their arrest are admissible in evidence. The Honourable Supreme Court has observed in the case of State of Gujarat vs. Mohammed Atik and others (supra) thus :-

“It is well-neigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made “in reference to their common intention.” in other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.”

Statements made by them after their arrest are not admissible in evidence. From the evidence collected by the prosecution, it is clear that these statements were made by applicant Nishant and other accused in their memorandum statement. Therefore, they are

inadmissible in evidence.

11. Not a single circumstance is brought on record to indicate that if the applicants are released on bail, they would be a danger or menace to the society. Moreover, according to the prosecution, accused Pooja is the main conspirator. She has been released on bail by this Court (Coram : Shrikant D. Kulkarni, J.). There is no connecting link between accused Pooja, accused Rahul Jadhav, accused Ashish Jadhav, Gaurav Lohare and applicant Nishant Jagtap.

12. Learned APP has vehemently submitted that applicant Somnath Sathe is involved in Crime No. 14/2019. Yashoda Sachin Sathe, Pramila Bai Sathe, Geeta Somnath Sathe had met applicant Somnath Sathe on 19th September, 2019, 27th September 2019, 4th October, 2019, 15th October, 2019, 25th October, 2019, 9th November, 2019, 13th November, 2019 and 6th December, 2019. He submitted that in this manner, conspiracy was hatched. I do not find any substance in this argument. Applicant Somanth Sathe is an under trial prisoner. His relatives can meet him at regular intervals with prior permission of the Jailor. At this stage, it cannot be said that

the applicant Somnath had met his family members only for this purpose. This aspect can be considered during trial. In this view of the matter, I am inclined to release the applicants on bail. Hence he following order :-

ORDER

- i) Both the applications are allowed.
- ii) Each of the applicants be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand) with one solvent surety each in the like amount in connection with Crime No. 0382/2019 registered with MIDC Latur Police Station under Sections 302, 120-B of the Indian Penal Code.
- iii) Both the applicants shall stay away from District Latur except for attending the Court at Latur, till the conclusion of the trial.
- iv) Applicants shall not tamper with the prosecution witnesses.
- v) Both the applicants shall furnish their detailed address and mobile numbers to the Sessions Court and concerned Police Station.
- vi) Both the applicants shall attend the concerned

Police Station on the date fixed unless exempted by the Sessions Court and co-operate for concluding the trial.

vii) Both the applications stand disposed of.

viii) It is clarified that the observations made in the above order are restricted to the decision of these applications only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

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