

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1319 OF 2021

MEHUL RAJNETSING THAKUR)...APPLICANT

V/s.

UNION OF INDIA AND OTHERS)...RESPONDENTS

WITH

INTERIM APPLICATION NO.1637 OF 2021

IN

BAIL APPLICATION NO.1319 OF 2021

SMT. EISHA SALIM BARVATIYA)...INTERVENOR

IN THE MATTER OF

MEHUL RAJNETSING THAKUR)...APPLICANT

V/s.

UNION OF INDIA AND OTHERS)...RESPONDENTS

Mr.Sudeep Pasbola a/w. Mr.Aakash Upadhyay i/b. Ashwin Duggal
and Associates, Advocate for the Applicant.

Mr.H.S.Venegaonkar, Advocate for the Respondent-UOI.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 21st DECEMBER 2021
PRONOUNCED ON : 4th FEBRUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.21 of 2020 registered with Police Station Nani Daman, for offences punishable under Section 302, 307, 120-B read with 34 of the Indian Penal Code (IPC) and under Section 27 of the Arms Act.

2 Interim Application No.1637 of 2021 filed by the intervenor is allowed to the extent of assisting the learned APP and stands disposed off.

3 The prosecution case, in short, is that informant is engaged in the business of tarpaulin sheet. In the month of June he had sold some tarpaulin sheets to Salim Memon (deceased)

and an amount of Rs.6,000/- was outstanding. At about 7.00 p.m. of 2nd March 2020, he had been to showroom of deceased by name Royal Suzuki and Bike Show Room situated at Khariwad, Nani Daman to meet Salim Memon. While the informant was on his mobile, he heard some noise like bursting of crackers from behind. He turned back and saw some persons had entered in the showroom armed with pistols and firing at the deceased. It appears that the deceased later on succumbed to the bullet injuries.

4 During the course of investigation one Javed Matiullah Khan was arrested who revealed the names of other co-accused Upendra Rai, Mehul Thakur (present applicant) and Hanif Ajmeri as the persons who were party to the conspiracy to commit the murder of the deceased. Accordingly, charge-sheet came to be filed. However, the applicant and other five were shown as absconding accused.

5 Mr.Pasbola, learned counsel for the applicant, submits that the applicant has been implicated with the aid of Section 120B of the IPC. Admittedly, according to the learned counsel, the dispute was *inter se* between accused Upendra Rai and deceased Salim Memon and the applicant had nothing to gain by conspiring to murder Salim Memon. There is no material on record to indicate presence of applicant at the scene of offence. There is no *prima facie* evidence to show that the applicant was in contact with other co-accused either before or after murder of deceased Salim Memon and had any knowledge. The so called statement of co-accused Javed Matiullah Khan is inadmissible and hit by Section 162 of the Code of Criminal Procedure (Cr.PC.) as well as barred under Sections 24 and 25 of the Evidence Act. Merely because the applicant happens to be friend of Upendra Rai and other co-accused Hanif Ajmeri he has been falsely implicated. Investigation is over and charge-sheet has been filed. Having regard to the material on record, there is no necessity of custody of the applicant. Hence, the applicant deserves to be enlarged on bail, argued learned counsel.

6 Mr.H.S.Venegaonkar, learned special public prosecutor, on the other hand, opposed the submissions by contending that there was property dispute between co-accused Upendra Rai and the deceased. The applicant and other co-accused introduced the contract killers so as to do away with the life of deceased. There is statement of witness which shows his vehicle was used in the commission of offence. Even the applicant was in the company of accused Upendra Rai in a hotel. The register of the concerned hotel, Aadhar card and Activa scooter have been duly seized in the course of investigation. Since the time of commission of offence, the applicant is absconding.

7 The learned special public prosecutor, to substantiate his submission, has invited my attention to the statements of some of the prosecution witnesses, which I would be referring during the course of discussion. According to the learned special public prosecutor all the circumstances *prima facie* sufficient to prove the involvement of the applicant in the crime. There is no

merit in the application and therefore the same is liable to be rejected.

8 Perused the investigation papers. During the course of argument the learned special public prosecutor submitted that his reply be also taken into consideration in addition to his submissions. However, the same is not forthcoming on record. Be that as it may, let me go through the material available on record.

9 The prosecution does not dispute that there was property dispute between co-accused Upendra Rai and the deceased. The allegation against the applicant is that he was one of the conspirators and facilitated the commission of the offence in question. The so called statement of co-accused Javed Matiullah Khan @ Sultan Khan is on record in which he has given the details in respect of property dispute between the deceased and accused Upendra Rai and how he and others, namely, Hanif Ajmeri and Mehul Thakur (applicant) planned to

kill the deceased. At the outset, I am with the submission of the learned counsel for the applicant that the so called statement is not only in the teeth of Section 162 Cr.P.C. but Sections 24 and 25 of the Evidence Act as well. No evidentiary value, therefore, can be attached to that statement.

10 The learned special public prosecutor has also placed reliance on the statement of one Girish Mohan Lal Raval who was owner of Activa scooter. As he was owing some sum to his friend Salman Ikrar Shaikh and was not able to repay the owed amount, his Activa scooter was taken away by Salman Shaikh. It is the prosecution case that the said Activa scooter was used in the commission of offence by the accused.

11 Then there is statement of Javed Matiullah Khan @ Sultan Khan. According to this witness as co-accused Hanif Ajmeri had demanded the motorcycle from him, he took the said Activa scooter from Salman Shaikh and handed over to the applicant. It is also relevant to note here that the said Activa

scooter and the pistol with two live cartridges came to be seized at the instance of co-accused Santosh Shamnarayan Dubey and not the applicant.

12 I have also gone through the statement of one Vijaykumar Pramodkumar Tiwari, who, at the relevant time was owner of Hotel Deltin. According to this witness on 5th March 2020 the accused including the applicant had stayed in his hotel and then he also handed over the ID proof i.e. Aadhar card etc. to the Investigating Officer. The prosecution is also placing reliance on these documents and the statement of concerned hotel owner.

13 Let me make it very clear that merely because the applicant stayed with other accused in the hotel or for that matter he travelled with them in itself would not be sufficient evidence to draw any inference that the applicant was one of the conspirators. Needless to say, the prosecution case is based on circumstantial evidence. In such type of case circumstance from

which conclusion of the guilt is to be drawn should in the first instance be fully established and all the facts so established should also be consistent with only one hypotheses that is the guilt of the accused.

14 *Prima facie*, the prosecution has not been able to establish convincing circumstances so as to draw any positive inference about the culpability of the applicant in the alleged offence. Investigation is over and charge-sheet has been filed.

15 Having regard to the material on record, I am of the considered view that the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Mehul Rajnetsing Thakur shall be released on bail in Crime No.21 of 2020 registered with Police Station Nani Daman, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the concerned police station twice in a week i.e. on every Wednesday and Friday, in between 11.00 a.m. to 1.00 p.m., till the conclusion of the trial.
- (iv) The applicant shall attend the Court proceedings regularly.
- (v) Bail before the trial Court.
- (vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)

AVK

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