

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3537 OF 2021

Rajesh Ramkumar Yadav .. Applicant
Versus
State of Maharashtra .. Respondent
...

Prashant Pandey a/w D Jain, Irfan Unwala i/b W3 Legal LLP for the Applicant.

A.A. Takalkar, A.P.P. for the State/Respondent.

Vijay Sonar, PI, Dharavi Traffic Division.
...

CORAM: BHARATI DANGRE, J.
DATED : 2nd AUGUST, 2022

P.C:-

1. The applicant came to be arrested on 26/02/2021 in connection with CR No. 63 of 2021 registered with Bangur Nagar Police Station which invokes Sections 302, 120-B, 506(2) read with Section 34 of the IPC. Since the day of his arrest, he is incarcerated and seek his release on bail on the ground that on filing of the charge-sheet, it has become apparent that the applicant is falsely implicated in the subject CR and there is no incriminating material, which would justify his further incarceration though he will take the consequences of the accusations levelled against him in the trial.

2. One Nitin Gupta, who claim to be indulging in social

work and working as Executive President of Maharashtra Police Boys Association, lodged an FIR stating that he was introduced to one Suresh @ Surya through a common friend and, he was desirous of obtaining membership of the said association. He received a phone call from his common friend Sharif asking the complainant to reach a hotel next to Rumania Hotel on Link Road, Goregaon, since Suresh was desirous of availing the membership. When he reached at the address, the deceased was sitting there with his friend Rajesh Yadav (applicant) and, thereafter, a discussion took place between them for 15 to 20 minutes in respect of the membership and the complainant and the deceased exchanged their mobile numbers to facilitate his work of securing the membership. They had tea in the hotel and, thereafter, at around 3:00 p.m all of them, stepped out. While he was smoking in a kiosk adjacent to the hotel, Sharif, Suresh and the applicant were chitchatting. After some time, Rajesh and Suresh were about to leave the place and Rajesh started his scooter and, all of a sudden, a person wearing red coloured shirt and a cap, hit Suresh by a hammer, as a result of which, he fell down and the said person repeated the assault in his head. Similarly, two other unknown persons stabbed him with a weapon like knife in his chest. One of the persons present there i.e. Sharif tried to rescue Suresh, but he was threatened not to interfere.

3. The by-standards were extremely petrified and stepped

back. The complainant gave a phone call to the police control room and, in the meantime, the 3 assailants fled away from the spot. The complainant narrate that the present applicant also left on a Scooty and when intended to contact, his mobile phone was switched off.

4. The complainant gave description of the three persons, who have mounted assault on Suresh, who succumbed to the injuries.

5. On the last date of hearing, the learned APP had advanced a submission that the event has been recorded in the CCTV footage. Today, however, she made a categorical statement that there is no such footage available.

6. The applicant face accusations along with the other co-accused and he is charged with section 120-B read with Section 34 of IPC. Admittedly, the applicant is not one of the assailants and the prosecution has to only establish the charge of criminal conspiracy.

For establishing the conspiracy, learned A.P.P. rely upon the two statements compiled in the charge-sheet being of Prakash Shetty and Nadeem Khan.

Prakash state, that 15 days back when he had gone to the market for shopping, he noticed the present applicant in a company of the 3 other co-accused chatting in front of a shop. When he carefully heard their conversation, he could hear the

applicant saying that Suresh has become famous in the area and, this is causing loss to them and some plan should be hatched for eliminating him. The witness state that hearing this, he ran away from the spot.

Another witness Nadeem state that one year before the incident, while he was carrying out his hawking activity in the market, he overheard the applicant speaking to the co-accused that Suresh was gaining weight in the area and earning huge sum and that he should be eliminated. The witness state that he informed Suresh about the said talk and asked him to be careful.

7. On the basis of the two statements as above, the prosecution has charged the applicant for offence under section 120-B of the IPC i.e. the offence of criminal conspiracy. The evidence of criminal conspiracy is very difficult to establish as the conspiracies are normally hatched in the darkness of the night, in a clandestine manner, but here are two witnesses, who come in support the prosecution, and attribute that the applicant is the person, who hatched conspiracy to eliminate the deceased in broad daylight and, on both the occasions i.e. 15 days back and one month back, he was conspiring to the co-accused openly in the market, to eliminate the deceased. The aforesaid statements fail to inspire truthfulness and, in any case, ultimately when the prosecution is able to succeed in establishing its charge under section 120-B of the IPC, the applicant may be convicted.

8. Another circumstance, which the prosecution is considered

to be an incriminating circumstance, is he fled away on his vehicle immediately after the incident. This circumstance, by itself, cannot be sufficient to establish his culpability, as there might be several reasons why he has left the spot. The recovery of the scooter at the instance of the applicant under section 27 of the Evidence Act is also of no consequence, since it is not the case of the prosecution that the vehicle was used in the crime. There is no recovery of any weapon from the applicant, though the prosecution alleged that the recovery under Section 27 of the Evidence Act led the investigating officer to a shop from where the applicant purchased a hammer, which was recovered from the co-accused. The statement of the shop owner in Kamraj Nagar is also recorded, wherein he state that when the investigating team brought a person wearing a burkha and when he lifted his burkha above his eyes, the shop keeper identified that he is the same person, who has purchased the hammer from him, some 12 to 13 days back.

The aforesaid statements fall short of incriminating material and the prosecution would be required to bring some cogent and reliable evidence to establish the guilt of the applicant.

9. In the wake of the above material being compiled in the charge-sheet, *prima facie*, since it is not sufficient for the continued detention of the applicant in connection with subject CR, on the investigation being complete and the charge-sheet

being filed, the applicant deserve his liberty.

Observations made hereinabove are prima facie in nature and limited to the extent of adjudication of the present application.

: ORDER :

- (a) Application is allowed.
- (b) Applicant – Rajesh Ramkumar Yadav shall be released on bail in connection with C.R.No. 63 of 2021 registered at Bangur Nagar Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (d) The Applicant shall mark his attendance to the concerned Police Station on first Monday of every Month between 10:00 a.m and 12:00 noon till framing of the charge.

(SMT. BHARATI DANGRE, J.)