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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3584 OF 2021

BINDER KARANSINGH GUJJAR
@ BINDER GUJJAR @ VIRENDRA
KARANSINGH GUJJAR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Ms. Sana Raees Khan, Adv. for the Applicant.
Mr. Amin Solkar, Sr. Adv. a/w Mr. S. H. Yadav, APP for the
Respondent-State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 28, 2022.

ORDER :

1. This is an application for bail by the applicant-Binder Karansingh Gujjar. Before I deal with this application, it would be useful to place some background facts in respect of an application for bail filed by co-accused Divya & Soniya. The applicant herein was not arraigned as an accused during the initial investigation in connection with the murder of Sandip Gadoli.

2. The co-accused Divya Ashok Pahuja and Soniya Ashok Pahuja had filed Criminal Bail Application No. 1714 of 2018,

which came to be rejected by this Court (**Coram** - Shri. Prakash D. Naik, J.) vide order dated 8th February, 2019. The facts are extracted from the said order.

- The First Information Report was lodged by Shri. Pradyumna Yadav with MIDC Police Station, Mumbai on 7th February, 2016 vide C.R. No. 92 of 2016, alleging that the first informant was posted as Police Sub-inspector in Haryana State Police Force. He was working with the Crime Branch Unit IV, Sector 10, Gurgaon as Police Sub-inspector. On 4th October, 2015, one Ashok Gujjar was shot dead by Sandip Gadoli, a known criminal. Ashok Gujjar was driver of one Binder Gujjar (applicant herein), another criminal. The offence was registered in connection with the said incident under Section 302 of Indian Penal Code, 1860 read with Section 25 of the Arms Act vide C.R. No. 1271 of 2015 with Gurgaon City Police Station. On 4th October, 2015 at about 9.30 hrs., Manish Khurana, Associate of Sandip Gadoli was shot and injured. FIR was registered vide C.R. No. 1272 of 2015 under

Sections 307, 148 and 149 of IPC and Section 25 of Arms Act with Gurgaon City Police Station. Special investigating team was constituted by DCP West Gurgaon to investigate two cases and the investigation was entrusted to Police Sub-inspector Pradyumna Yadav. Binder Gujjar (applicant herein) is involved in the offences like murder, attempt to murder, firing, kidnapping and about 24 cases are registered against him with various police stations in the city of Gurgaon.; Whereas, Sandip Gadoli is involved in similar offences and offences of extortion, robbery and 40 cases were registered against him.

- On 5th February, 2016, Crime Branch received information through reliable source regarding whereabouts of Sandip Gadoli at Bhiwadi, Rajasthan. Based on such information, police team started search operation and went to Bhiwadi, Rajasthan. On 5th February, 2016, while the police team reached Bhiwadi, Rajasthan, they learnt that the aforesaid accused has left Bhiwadi, Rajasthan for Jaipur along

with his associates. The search team then proceeded towards Jaipur on same day and reached there at about 6.30 p.m. On the basis of location/interception of mobile phones, it was revealed that the aforesaid person and his associates are proceeding to Ajmer from Jaipur. The investigating team proceeded to Ajmer. On 6th February, 2016, information was received that Sandip Gadoli and his associates reached Mumbai. The police team then proceeded to Mumbai. They reached Mumbai on 7th February, 2016. On 7th February, 2016, as per the source information, it was learnt that the gangster Sandip Gadoli is staying in Airport Metro Hotel in Mumbai. The police team then reached to the said hotel. Information was gathered about the room occupied by the aforesaid gangster. It was revealed that he was occupying Room No. 107. It was also learnt that the wanted accused would check out hotel shortly. The hotel record was checked and it was found that the gangster gave driving licence in the name of one Rishabh Singh as proof of his identity.

One of the team members contacted the police for their support. Inspector Amit and Constables Rajbir and Jitendra waited outside the hotel. Constables Anil and Deepak were instructed to wait near reception gallery. Constable Rajbir was told to inform local police and police control room and seek their assistance. The room boy was asked to knock the door of Room No. 107. The door was opened. The police entered the room and they asked the gangster Sandip Gadoli to surrender. The gangster removed the pistol kept below pillow and fired towards the police. Apprehending danger, the policemen fired the shots towards Sandip Gadoli. The girl accompanying Sandip Gadoli, came out shouting from bathroom. Sandip Gadoli pointed revolver and came towards police. The policemen tried to snatch pistol from Sandip Gadoli. There was scuffle. Sandip Gadoli fired from pistol. Head Constable Paramjit suffered injury. Gadoli tried to grab the service revolver from hands of police in self defence and apprehending danger

Paramjit and Pradyumna Yadav fired towards Sandip Gadoli. He was injured. In the meantime, the local police also reached and the gangster was taken to the hospital, where he succumbed to the injuries before reaching the hospital. Constable Vikram Singh sustained injury to his foot of left leg. On the basis of statement of PSI Pradyumna Yadav, FIR was registered with MIDC Police Station vide C.R. No. 92 of 2016. The applicant (Divya) and others joined the investigation. Subsequently, special investigating team was appointed for conducting the investigation. The investigation was headed by Assistant Commissioner of Police, Crime Branch and the investigation proceeded vide C.R. No. 12 of 2016.

- During the course of investigation, it was revealed that the complainant Pradyumna Yadav and his team members were involved in fake encounter of Sandip Gadoli and they were impleaded as accused. The co-accused Divya Ashok Pahuja and Sonia Ashok Pahuja were purportedly part of conspiracy and were

allegedly involved in providing information about the deceased. Divya is the daughter of Sonia. Divya was accompanying the deceased Sandip Gadoli at the time of incident in question. On completing investigation, charge-sheet was filed.

3. The application for bail filed by co-accused Divya & Soniya was rejected by this Court. While rejecting the aforesaid application, this Court observed thus:

“Having heard both the sides, I have perused the charge-sheet. The transcripts of the conversation indicate interaction between the applicants and the co-accused. *Prima-facie*, it appears that the applicants had knowledge about plan of killing the deceased. Applicants were in contact with each other and one of them was providing the location of Sandip Gadoli to two others. Applicant no. 1 is the daughter of applicant no. 2. After receipt of information about location of Sandip Gadoli from applicant no. 1 to applicant no. 2, the same was forwarded to wanted accused Manoj Gujjar. He then forwarded the same to accused no. 1. During conversation, it was informed by applicant no. 1

to applicant no. 2 that Sandip Gadoli is not having any arm with him. The evidence indicate that they had knowledge about the plan of killing the deceased and hence, they are involved in commission of offence.

FIR was lodged by accused no. 1. Subsequently, investigation was handed over to Special Investigating Team. The involvement of police party in fake encounter was revealed. Investigation proceeded. It is a deep rooted conspiracy to liquidate the deceased in connivance with his rivals. Statement of various witnesses were recorded.

From the documents collected during investigation, it was revealed that accused no. 1 and his associates in order to eliminate the deceased, entered into criminal conspiracy with Manoj Gujjar and applicants and to take end result. It is alleged that accused had fired and killed the deceased in furtherance of conspiracy. In the FIR lodged by Pradyumna Yadav, it was stated that applicant no. 1 was in the bathroom at the time of incident. She came out shouting when the police had entered into the room and trying to apprehend the deceased. Evidence on record, however,

speaks volumes of involvement of applicants in the crime.

During the course of investigation, it was disclosed that applicant no. 1 Divya Pahuja knew the identity of Rishabh Singh as Sandip Gadoli. This fact of real identity of Rishabh Singh as Sandip Gadoli was communicated by Divya Pahuja to her mother Sonia Pahuja, who in turn informed this fact to Manoj Gujjar. Further Manoj Gujjar used to inform this to PSI Pradyumna Yadav.

It is the case of prosecution that, knowing fully well about the previous enmity between Binder Gujjar (applicant herein) and Sandip Gadoli, Manoj Gujjar along with accused no. 1 Pradyumna Yadav, Vikram Singh, Jitendra Yadav, Deepak Kakran and Paramjit Ahlawat hatched a criminal conspiracy with applicants to kill Sandip Gadoli. In furtherance of the said criminal conspiracy, accused Pradyumna Yadav along with co-accused Vikram Singh, Jitendra Yadav, Deepak Kakran and Paramjit Ahlawat, as planned, arrived in Hotel Airport Metro, Andheri (E), Mumbai, and killed Sandip Gadoli by firing with their fire arms. Thereafter, it has been disclosed that, they destroyed

the original evidence from the place of offence and further created falsified evidence and filed a false complaint with the MIDC Police Station, Andheri (E), Mumbai.

Pradyuman Yadav, Parmjit Ahlawat, Vikram Singh, Deepak Kumar Kakran and Jitendra Yadav had entered in the hotel and instead of completing arrest formalities, accused as part of conspiracy, had fired from a close range on Sandip Gadoli in order to kill him.

The CCTV footage of the passage clearly shows that Sandip Gadoli was trying to snatch the revolver carried by accused Paramjit Ahlawat. Paramjit realizes that he stuck a wound. Although, Sandip Gadoli did not carry pistol with him, Paramjit Ahlawat falsely stated in his statement that the wound he has on his head was due to the shot fired by Sandip Gadoli in Room No. 107 of the hotel.

It is alleged that, PC Vikram Singh Rajbir Singh's shoe was shot by Paramjeet's 0.38 revolver as a part of conspiracy, but PC Vikram Singh Rajbir Singh in his statement falsely stated that he was shot at by the pistol of Sandip Gadoli. Accused Vikram Singh Rajbir Singh and his

associates also pretended a fake encounter and gave false statements parallel to the FIR, that deceased accused Sandeep Gadoli attempted to kill them. As a part of conspiracy and with common intention accused Pradyumn Yadav, Paramjit Ahlawat, Vikram Singh, Deepak Kumar Kakran and Jitendra Yadav had destroyed original evidences from the place of offence and thereby created false evidence by tampering with the scene of offence so as to give impression that it was a genuine exchange of firing.

It is alleged that, on 7th February, 2016 at 7.00 hrs., during travelling towards Mumbai, accused H.C. Paramjit Ahlawat contacted one police official Khanvilkar and requested to help PSI Prayumna Yadav to know the jurisdiction of police station where wanted accused Sandip Gadoli had arrived in hotel. Thereafter, PSI Pradyumna Yadav contacted Khanvilkar and enquired about the jurisdiction, wherein Hotel Airport Metro falls. Khanvilkar told him that Hotel Airport Metro falls under jurisdiction of Sahar Police Station and told to contact API Naik of Sahar Police Station. Meanwhile, API Naik was out of jurisdiction.

He told them to contact PC Torane. The said PC Torane, who was in police uniform, met the police team of Gurgaon Haryana near Hotel Airport Metro, where PSI Pradyumna Yadav denied to take his help as he was in uniform. Then PC Torane told them that the said place falls under jurisdiction of MIDC Police Station and requested them to take help of MIDC Police Station. PSI Pradyumna Yadav and his team entered in Hotel Airport Metro. Though, it is a fact that, police team from Gurgaon, Haryana had arrived at Hotel Airport Metro, Andheir (E), Mumbai, in order to arrest the wanted accused Sandip Gadoli. However, the acts and criminal intent of the arrested accused police officials and men viz. Pradyumna Yadav, Vikram Singh, Jitendra Yadav, Deepak Kakran and Paramjit Ahlawat indicate that they had entered into criminal conspiracy with the co-accused (applicant accused and wanted accused) and in pursuance of the said criminal conspiracy, killed the wanted accused Sandip Gadoli.

The evidence from the CCTV footage recording of camera nos. 1, 5 and 6 of Hotel Airport Metro, MIDC,

Mumbai, that was extracted from DVR Machine, indicate that in order to show genuine exchange of firing between wanted accused and police taken place, original evidence was destroyed and replaced with the false evidence. After Sandip Gadoli was injured and fell down in the passage, accused Vikram Singh is seen planting a fire arm held by him near Sandip Gadoli.

As per the conversation recording retrieved by the Cyber Forensic Expert of FSL, Kalina of mobile phones of applicant No. 1 Divya Ashok Pahuja and applicant no. 2 Sonia Ashok Pahuja, it was clear that the deceased Sandip Gadoli was not carrying any fire arm with him. This was also corroborated from the statement of witness Manish Khurana and Pradeep Ahuja.

During the course of investigation, statements of several witnesses were recorded. The statements of witnesses recorded during investigation indicate that they heard sound of shots being fired intermittently in Hotel Airport Metro on 7th February, 2016. The said fact is also corroborated from CCTV TV camera footage video/audio

recording. According to prosecution witnesses Manish Khurana and Pradeep Ahuja were friends of the deceased and were accompanying him in the journey. It is further alleged that Divya Pahuja was aware of the real identity of Rishabh Singh as that of Sandip Gadoli. It was also ensured that the deceased was not carrying any fire arms with him. It is the case of the prosecution that the accused in order to eliminate Sandip Gadoli hatched criminal conspiracy with Manoj Gujjar, Soniya Pahuja and Divya Pahuja and in order to achieve the end result for their conspiracy, accused no. 1 and Paramjit Ahlawat had fired at Sandip Gadoli and killed him. It is also the case of the prosecution that the accused including applicant in furtherance of conspiracy, destroyed the evidence from the place of offence and created false evidence to show that Sandip Gadoli had fired on the raiding police party. False FIR was registered at the instance of accused no. 1 Pradyumna Yadav, under Sections 302, 201, 182, 193, 120-B read with 34 of IPC.

The CCTV Footage of the passage show that Sandip Gadoli was trying to snatch the pistol carried by accused

Paramjit Ahlawat. After this scuffle, Paramjit realised that he had sustained wound. Although Sandip Gadoli did not carry any pistol with him, it was contended by accused Paramjit that he had sustained wound due to shot fired by Sandip Gadoli in Room No. 107 of the hotel. PC Torne informed police that the place falls within jurisdiction of MIDC Police Station and requested them to take help of the said police station. Instead of informing local MIDC police station, accused no. 1 and his team entered into Hotel Airport Metro. The CCTV Footage recording of camera nos. 1, 5 and 6 of hotel Airport Metro was retrieved from DVR machine. It is apparent that in order to show the genuine exchange of fire between wanted accused and the police, the original evidence was destroyed and replaced with false evidence. The co-accused were granted bail on the ground that they were not present on the spot of incident at the time of commission of incident in question.

According to prosecution, as per the conversation, recording retrieved by Cyber Forensic Expert of FSL Kalina of mobile cells of co-accused Divya Pahuja and Sonia

Pahuja, it was clear that deceased Sandip Gadoli was not carrying any fire arm with him. This was also corroborated from the statements of the witnesses. The situation in the room occupied by the deceased indicating several incriminating circumstance against the accused. The CCTV Footage also indicates the movements of accused, police personnel before the firing and after the incident of firing which also shows their suspicious conduct and involvement in the crime. The CCTV Footage also shows that the co-accused had pushed the fire arm which was lying on the ground in the breakfast lobby by his legs. The accused provided false information in order to avoid facts being brought on record regarding seizure of 7.65 mm pistol and to empties of 7.65 mm, that was fired from different pistol. According to Ballistic Experts opinion, the fire bullet shot marking on the shoe of co-accused is the bullet fired by 0.38 bore revolver of accused Paramjit Ahlawat. This is not the stage to evaluate or appreciate the evidence. However, *prima-facie* there is substantial evidence to show the involvement of the applicants in the crime.

The recorded conversation of Divya Pahuja with her mother Sonia Pahuja and wanted accused Manoj Gujjar throw light on the criminal conspiracy prior to the actual killing. It is revealed from the conversion that Divya and Sonia Pahuja were about to get their remuneration after work done. The transcripts of mobile phone of both the applicants accused are having corroboration with expert opinion and other material evidence which corroborates the prosecution story. On keen perusal of the conversation received from FSL, it become clear that the both the applicant accused were having knowledge that the Gurgaon Police were in the search of Sandip Gadoli in order to kill him. Applicant no. 1 sent the photograph of Sandip Gadoli to her mother, applicant no. 2. As per the report of FSL, voice samples of both the accused matched with the mobile conversation. The following circumstances also show involvement of applicants :-

- i) During the journey to Mumbai, Divya Pahuja and Sonia Pahuja decided code word language to provide information regarding Sandip Gadoli e.g.

if Sandip Gadoli is accompanying Divya, she should start conversation by saying as, "Mummy, I have brought the medicine, I will take it".

- ii) Divya Pahuja was well aware of the real identity of Rishabh Singh as "Sandip Gadoli" but she did not inform this fact to the investigation agencies.
- iii) It is evident from the conversation that Divya Pahuja was providing details of the location of Sandip Gadoli to her mother Sonia Pahuja, who passed it to Manoj Gujjar.
- iv) Divya Pahuja had enquired with Sonia Pahuja whether she had forwarded onwards the clicked photo of Sandip Gadoli.
- v) Divya Pahuja had informed Sonia Pahuja that Sandip Gadoli was not carrying any fire arm.
- vi) Sonia Pahuja had informed Divya Pahuja about police trailing them.
- vii) In the conversation of Divya Pahuja with Sonia and Manoj Gujjar it is heard that both of them

wanted to give Divya Pahuja some article / item.

- viii) Sonia Pahuja had asked Divya Pahuja to give a hint / tip off about Sandip Gadoli while he was alone.
- ix) Divya Pahuja asked her mother to "inform Manoj Gujjar to provide her one house after this job" Sonia Pahuja replied that he would surely give her a house.
- x) From 04/02/2016, the day Divya Pahuja left her house to accompany Sandip Gadoli till date of incident she was in constant touch over mobile phone with her mother/accused Sonia Pahuja and was providing information about Sandip Gadoli. On the fateful day i.e. on 07/02/2016 at about 10:45 am Divya Pahuja and Sonia Pahuja got in touch over mobile phone and in this conversation Sonia Pahuja confirmed that Sandip Gadoli was in the hotel. (Thereafter this information was communicated to Manoj Gujjar at 10.48 a.m. and Manoj Gujjar further informed

Pradyumna Yadav over mobile phone at 10.51 a.m. about the location of Sandip Gadoli in the hotel. This is evident from their CDR details.)

Details of CDRs of mobiles of applicant-accused Divya Ashok Pahuja (Mob # 97116 57081) and applicant-accused Sonia Pahuja (Mob # 99714 78300), wanted accused Manoj Gujjar (Mob # 95993 26543) indicate that they all were in touch with each other during their operation to kill Snadip Gadoli. Applicant-accused Divya Ashok Pahuja had been providing information about Sandip Gadoli to applicant-accused Sonia Ashok Pahuja and she in turn was providing these details to wanted accused Manoj Gujjar, who in turn was providing these details further to accused Pradyumna Yadav, as it is evident from their call records as mentioned below.

- xi) Call records between 10.45 a.m. to 10.51 a.m. dated 07/02/2016 of accused Divya Pahuja, Sonia Pahuja, Manoj Gujjar and Pradyumna

Yadav indicate that they had provided location of Sandip Gadoli in the hotel to Pradyumna Yadav.

- xii) Despite being aware of the fact that the deceased Sandip Gadoli did not possess a gun at the date and time of the incident, accused Divya Pahuja deliberately gave wrong information while recording her statement u/sec. 164 of Cr.P.C. that the deceased was in possession of a gun.

In view of the aforesaid circumstances, no case for grant of bail is made out. It is, however, clarified that observations made in this order are *prima-facie* and made for adjudicating this application for bail and the trial Court shall not be influenced by the same."

4. The first charge-sheet in the present case was filed on 4th August, 2016. The supplementary charge-sheet came to be filed against the applicant on 18th January, 2020. The applicant was arrested on 22nd October, 2019 and remanded to police custody on 23rd October, 2019. Manoj Gujjar, applicant's brother is shown as an absconding accused in the present case. The applicant was arrested in another

case, which came to be registered as FIR No. 717 of 2015 at Gurugram and was in custody from 10th December, 2015 to 20th March, 2018. Learned Counsel for the applicant therefore submitted that the applicant was in judicial custody at the time of alleged incident, hence case registered against him is false.

5. It is the case of prosecution that during investigation, it was revealed that the Haryana Police had conspired with the applicant along with his brother Manoj Gujjar and other co-accused and it was Divya Pahuja, who was allegedly providing the location of deceased to the Haryana Police and she was allegedly rewarded with the flat for helping the applicant. It is the prosecution's case that the applicant due to his enmity with the deceased Sandip Gadoli, conspired to commit the alleged crime.

6. Learned Counsel for the applicant submitted that there is hardly any evidence to implicate the accused. It is only because the prosecution could not trace the whereabouts of his brother Manoj Gujjar, the applicant is being falsely implicated. To prove that the applicant was the master

mind of criminal conspiracy, there is absolutely no material on record. The applicant was in custody when the said offence was committed and therefore, there is absolutely no question of the applicant being involved or being part of the criminal conspiracy, much less being the master mind. The applicant was implicated almost after 3 & ½ years of the incident in question, after the investigating machinery failed in their attempts to nab the absconding accused Manoj Gujjar. There is absolutely no material in the nature of recorded conversation, CCTV footage or any other material against the applicant.

7. It is submitted that the applicant came to be arrested in the year 2019 and he was charged in the second charge-sheet, that has been filed after 4 years of the incident in question i.e. 07/02/2016. She submits that the charge-sheet does not have any incriminating materials against the applicant. There is nothing to show the complicity of applicant in the present crime.

8. The Special Counsel for the prosecution, Shri. Amin Solkar, on the other hand, submitted that it is the applicant,

who is the master mind of the entire episode. There was rivalry between the deceased Sandip Gadoli and that of the applicant. He submits that the applicant wanted to establish his supremacy and therefore, hatched the conspiracy to kill Sandip Gadoli with the help of accomplices co-accused Divya Pahuja and Sonia Pahuja. He also relied upon various jail visits, made by the absconding accused Manoj Gujjar to meet the applicant in jail prior to the incident. He relied upon the supplementary charge-sheet to demonstrate the incriminating materials against the applicant.

9. I am informed that the trial has already commenced. Three witnesses i.e. the doctor, who conducted the post-mortem, the hotel boy and the spot panch have already been summoned to appear before the learned Trial Court soon. The record reveals that there was previous enmity between the group of deceased Sandip Gadoli and that of the applicant. The applicant is involved in the offences like murder, attempt to murder, firing, kidnapping and about 24 cases are registered against him. No doubt, the applicant's

name is not disclosed in the FIR. Upon investigation, after filing of the first charge-sheet, the applicant's involvement was revealed. Manoj Gujjar, the real brother of applicant is absconding. This Court while rejecting the bail application of co-accused Divya Pahuja and Sonia Pahuja has observed that there was a recorded conversation of Divya with her mother Sonia and wanted accused Manoj Gujjar, which throws light on the criminal conspiracy prior to the actual killing. It is revealed from the conversation that Divya Pahuja and Sonia Pahuja were about to get their remuneration. This Court observed that it is evident from the conversation that Divya Pahuja was providing details of the location of Sandip Gadoli to her mother Sonia Pahuja, who passed it to Manoj Gujjar. Divya Pahuja asked her mother to inform Manoj Gujjar to provide her one house after this job, to which Sonia Pahuja replied that he would surely give her a house. This Court while rejecting the bail application of co-accused has observed that details of Call Records of mobiles of Divya Pahuja, Sonia Pahuja and wanted accused Manoj Gujjar indicate that they were in

touch with each other during their operation to kill Sandip Gadoli. Sandip Gadoli was killed in the alleged encounter on 7th February, 2016. The Jail Register indicates the number of occasions Manoj Gujjar visited prior to 7th February, 2016 to meet the applicant. Manoj Gujjar visited the jail on 13/01/2016, 20/01/2016, 30/01/2016, 10/02/2016 and post the incident. It is material to note that the allegation is that Sandip Gadoli was killed in the fake encounter, which was orchestrated by the applicant while in jail. There were number of offences registered against Sandip Gadoli and also against the applicant. Sandip Gadoli is alleged to have killed the acquaintances on the side of the applicant. Though the applicant was acquitted in several of the offences, having regard to the past antecedents, I am not inclined to grant bail to the applicant as the trial has commenced and the witnesses are to be examined soon. The real brother of the applicant Manoj Gujjar is absconding.

10. The decision of Hon'ble Supreme Court dated 05/04/2019, relied upon by the learned Counsel for

applicant in the case of **Zahur Haider Zaidi vs. Central Bureau of Investigation (Criminal Appeal No. 605 of 2019 arising out of S.L.P. (Cri.) No. 2123 of 2018)**, will not assist the applicant as in that case the trial had not made substantial progress beyond framing of the charge and that it was observed that "completion of trial will take some time".

11. The decision of Hon'ble Supreme Court dated 27/10/1994, relied upon by the learned Counsel for applicant in the case of **P. K. Narayanan vs. State of Kerala (Criminal Appeal Nos. 315 and 316 of 1990)**, will not be of any assistance to the applicant as the same turned on the facts of that case, where the offence of criminal conspiracy was not established, post trial.

12. The decision of Hon'ble Supreme Court dated 21/11/1983, relied upon by the learned Counsel for applicant in the case of **Bhagirath Singh S/o. Mahipat Singh Judeja vs. State of Gujarat (Criminal Appeal No. 658 of 1983)**, again is of no assistance to the applicant's case. The High Court had interfered with the discretion of

the learned Sessions Court while granting bail. The Supreme Court observed thus:

“even where a prima-facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but, whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion gained in his favour by tampering with evidence”.

13. In the present case, the applicant's brother, co-accused Manoj Gujjar is absconding. The attempt to tamper with the evidence can not be ruled out.

14. The next decision of Hon'ble Supreme Court dated 06/12/1977, relied upon by the learned Counsel for applicant in the case of **Gudikanti Narsimhulu and Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh (AIR 1978 SC 429)**, can also be of no avail to the applicant. The present is a case where the allegation is that the applicant hatched conspiracy while in jail custody. The applicant's antecedents are not very favourable.

15. The decision of Hon'ble Supreme Court is relied upon by the learned Counsel for applicant in the case of **Parveen**

vs. The State of Haryana (AIR 2022 SC 270). Their Lordships held that to prove the charge of conspiracy within the ambit of Section 120(B) of Indian Penal Code, 1860, it is necessary to establish that there was an agreement between the parties for doing an unlawful act.

16. Learned counsel relied upon the decision of this Court in the case of **Sagar Maruti Dhotre vs. The State of Maharashtra (Criminal Bail Application No. 1904 of 2015)**. That was a case where the applicant was enlarged on bail, when there were no antecedents *qua* the applicant.

17. The learned Counsel for applicant heavily relied upon the decision of Hon'ble Supreme Court dated 16/01/2012 in the case of **Maulana Mohd. Amir Rashadi vs. State of U.P. and Ors. (Criminal Appeal No. 159 of 2012 arising out of S.L.P. (Cri.) No. 10244 of 2010)**, to support her contention that merely on the basis of criminal antecedents, the claim of applicant can not be rejected.

Their Lordships have observed that

"It is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as

possibility of fleeing away from the jurisdiction of the Court etc.”

18. Having regard to the materials on record in the form of first charge-sheet and the supplementary charge-sheet, in my opinion, this is not a fit case to enlarge the applicant on bail, as even the trial has commenced. The criminal antecedents of the applicant and the real brother of the applicant still absconding has weighed in my mind, apart from the role with which the applicant is charged with, to reject this application. Hence, I pass the following order :-

:: ORDER ::

Criminal Bail Application No. 3584 of 2021 is rejected.

(M. S. KARNIK, J.)