

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

CRIMINAL BAIL APPLICATION NO. 4469 OF 2021

Ganesh Tanaji Kadam

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Aniket U. Nikam a/w. Mr. Vivek N. Arote, for the Applicant.

Mr. Y. Y. Dabke, APP for the Respondent/State.

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**CORAM : C.V. BHADANG, J.
DATE : 24 MARCH 2022**

P.C.

. By this Application, the Applicant (Accused No.12) is seeking release on bail. The Applicant alongwith co-accused has been chargesheeted for the offence punishable under Section 302, 323, 427, 143, 147, 148, 149, 120-B, 212 and 174(A) of IPC, Section 4/27 of the Arms Act and Section 37(1)(3), 135 of the Maharashtra Police Act in Crime No.445/2019 of Police Station Paud, Pune (Rural).

2. There are in all 12 Accused in this case. According to the prosecution, the Accused had hatched a conspiracy to eliminate

deceased Pratik Satav. The incident in question is alleged to have happened on 8 October 2019, at about 3.30 p.m. wherein the co-accused Rajit Kalamkar (A1), Kiran Satav (A2), Samir Pandhare (A3), Kiran Kalamkar (A4), Mahesh Gawade (A5) and two other unidentified persons had assaulted the deceased with *koyta* and had damaged the swift car of the informant. Mahesh Satav is the eye witness to the incident.

3. In this case, after investigation, a chargesheet is filed. The Applicant was arrested on 22 July 2021 and is in custody since then.

4. I have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

5. It is submitted by the learned counsel for the Applicant that admittedly, the Applicant is not part of the incident dated 8 October 2019 in which Pratik Satav was assaulted and done to death. It is submitted that the only role attributed to the Applicant is of being a part of the conspiracy to eliminate the deceased. It is submitted that the prosecution also claims that prior to the incident, the Applicant had threatened the parents of the deceased saying that they will kill their son Pratik Satav. It is submitted that the evidence of conspiracy is in the form of

statement of Sandeep Raut and Raviraj Langote, out of which statement of Raviraj Langote is recorded after a period of two years. It is submitted that these witnesses claim of having overheard the conversation amongst the Accused of a conspiracy to eliminate the deceased. In the submission of learned counsel it is insufficient to show any *prima facie* case to connect the Applicant with the crime. The learned counsel has pointed out that the co-accused Vaibhav Tapkir (A5), Vijay Kudale (A6), Akshay Kudale (A7) and Mahesh Kadam (A8) have been granted bail by the learned Sessions Judge. It is submitted that the name of the Applicant does not figure in the FIR.

6. Learned APP has strenuously urged that the offence is serious and the Applicant was a part of the conspiracy to eliminate the deceased on account of previous enmity. It is submitted that the parents of the deceased were threatened prior to the incident by the Applicant which would indicate that he was part of the conspiracy. Learned APP however did not dispute that the Applicant is not part of the incident dated 8 October 2019 in which the deceased was assaulted resulting into his death. It is submitted that the Applicant has criminal antecedents against him and he was absconding for quite some time and although the incident is of year 2019 he was apprehended in July 2021. It is submitted that looking to the antecedents of the Applicant, there is every possibility of misuse of bail by

threatening the prosecution witnesses or fleeing from the cause of justice.

7. In reply, the learned counsel for the Applicant has placed reliance on the decision of the Supreme Court in *Prabhakar Tewari Vs. State of Uttar Pradesh & Anr.*¹ and *Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh & Anr.*² in order to submit that mere presence of criminal antecedents in the absence of any *prima facie* case are not material.

8. I have given my anxious consideration to the rival circumstances and the submissions made.

9. Admittedly, the incident of assault on Pratik Satav had taken place on 8 October 2019 in which the Applicant is not present. Admittedly, the Applicant is not part of the said incident of assault and the prosecution case in so far as the Applicant is concerned, is of he being a party to the conspiracy to eliminate the deceased on account of previous enmity. It is necessary to note that the eye witnesses to the incident namely Prakash Satav who is father of the deceased, Shubham Satav and Priyanka Raut, do not name the Applicant as one of the assailants. In so far as the allegation of conspiracy is concerned, the Investigating Officer had recorded the statement of two witnesses namely Sandeep Raut and Raviraj Langote, who claim to have overheard

¹(2020) 11 SCC 648

²(2012) 2 SCC 682

the conversation amongst the accused about conspiracy to eliminate the deceased.

10. I have gone through the statement of Sandeep Raut and Raviraj Langote which are at page Nos.97 and 206 of the compilation. It can be seen that statement of Sandeep Raut was recorded on 9 October 2019 while the statement of Raviraj Longote was recorded after about two years i.e. on 15 August 2021.

11. The fact remains that the only evidence in so far as the conspiracy is in the form of statement of Raviraj Langote and Sandeep Raut, out of which the statement of Raviraj Langote is recorded after a period of two years. There is no recovery of any incriminating articles from the Applicant, except that, the learned APP pointed out that he was shown to be in contact with the co-accused. In so far as the criminal antecedents are concerned, the brother of the Applicant i.e. Mahesh Kadam who has also criminal antecedents has been released on bail by the learned Sessions Judge. It is necessary to note that it is only when the prosecution demonstrates a *prima facie* case showing involvement of the Applicant in the crime that criminal antecedents can enter consideration, in the context of the possible misuse of the liberty, if granted and not otherwise. That apart, in my considered view, the apprehension expressed on behalf of the prosecution can be

taken care of by imposing appropriate conditions. The investigation is complete and the chargesheet is filed.

12. In the result, the following order is passed.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Ganesh Tanaji Kadam, be released on bail in Crime No.445/2019 of Police Station Paud, Pune (Rural), on executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties, in the like amount.
- (iii) The Applicant shall report to the concerned Police Station once in a month i.e. on first Monday between 11.00 a.m. to 1.00 p.m. and shall undertake to remain present before the learned Sessions Judge during the course of trial, unless exempted.
- (iv) The Applicant shall not directly or indirectly make any attempt to contact, influence or threaten the prosecution witnesses and shall not otherwise tamper with the prosecution evidence.
- (v) The Applicant shall furnish his permanent residential address alongwith proof before the learned Sessions Judge.
- (vi) The Applicant shall not indulge into any similar offence, while on bail.

(vii) In the event, if there is non compliance of any of the condition including attendance before the learned Sessions Court on any two consecutive dates, liberty to the prosecution to apply for cancellation of bail, so granted.

(viii) Bail bonds to be furnished before the learned Sessions Judge.

(C.V. BHADANG, J.)