

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2523 OF 2021**

Kadar Nazir Inamdar,
Aged 39 years, Occu – Business,
Residing at C-3, Laxmi Kripa Apartment,
Bangarwadi, Lonavala, Tal. Maval,
District - Pune
(at present at Yerwada Central Prison) ... APPLICANT

versus

The State of Maharashtra,
(at the instance of Lonavala City Police Station)
District Pune ... RESPONDENT

**WITH
BAIL APPLICATION NO.47 OF 2022**

Suraj Vijay Agarwal,
Age 39 years, Occu – Business,
R/at : above Gopalkrupa Hardware and Electricals,
House No.12, F Ward, MG Road, Lonavala,
Pune – 410 401
(at present Yerwada Central Prison, Pune) ... APPLICANT

versus

The State of Maharashtra
(at the instance of the P.I. - Lonavala
City Police Station, Pune) ... RESPONDENT

Mr. Aabad Ponda, Senior Advocate i/by Mr. Ganesh Bhujbal, for Applicant in BA 2523 of 2021.

Mr. Aniket Nikam with Mr. Piyush Toshnival, Mr. Ashish Satpute, Mr. Vivek Arote i/ by Mr. Amit Icham, for Applicant in BA 47 of 2022.

Mrs. Aruna S. Pai, Public Prosecutor with ms. Ujwala Pawar, Spl. P.P., Mr. P.H.Gaikwad, APP, for State.

CORAM : **N.J.JAMADAR, J.**
RESERVED ON : **5th JULY, 2022**
PRONOUNCED ON : **29th SEPTEMBER, 2022**

P.C.

1. The Applicants – Suraj Vijay Agarwal (Accused No.1) and Kadar Nazir Inamdar (Accused No.4) who are arraigned in C.R.No.487 of 2020 registered with Lonavala City Police Station for the offences punishable under Sections 120B and 302 read with Section 34 of the Indian Penal Code, 1860 (the Penal Code) and Sections 3 and 4 read with Section 25 and 27 of the Arms Act, 1959, have preferred these applications for enlarging them on bail.

2. Short of unnecessary details, the prosecution case runs as under :

2.1 Rahul Shetty (deceased) was the husband of Smt. Saumya Shetty (the first informant). They were residing at House No.61, Near Gupta Sweet Home, Jaichand Chowk, Lonavala, along with their son Daksh. Rahul was involved in political activities. He was a former President of the Lonavala Town Unit of Shivsena.

2.2 The prosecution case proceeds on the premise that on account of political activities and other dealings, relations of Rahul with a number of persons assumed inimical proportion. Broadly, it is alleged, the accused No.1 Suraj had inimical relations with Rahul on account of political rivalry, which was fostered since the defeat of first informant Soumya in a process to fill the vacancy of a co-opted member of Lonavala Municipal Council.

2.3 Deepali Rahul Bhilare (Accused No.2) allegedly had a romantic relationship with Rahul. However, on account of the resistance by the family members of Rahul, the desire of Accused No.2 to marry Rahul could not fructify. As Rahul eventually broke up with Accused No.2, she had a grudge against Rahul.

2.4 It is further alleged, the deceased Rahul had developed illicit relationship with the wife of Rashid Inamdar (Accused No.8), the brother of Kadar Inamdar (Accused No.4), as well.

2.5 The prosecution alleges that on account of the aforesaid inimical nature of relationship and the axe which, each of the abovenamed accused, had to grind against the deceased, the accused had repeatedly threatened to eliminate the deceased, made abortive attempts at the life of the deceased and hatched conspiracy to kill the deceased by hiring contract killers.

2.6 On 26th October, 2020 at about 9.30 a.m., while the deceased was sitting in front of Yewale Tea Stall, the first informant heard loud noise of firing. The first informant rushed to the spot. The deceased was found lying in a pool of blood. He was shot at, after an initial assault by means of an axe on the neck. It further transpired that the assault was mounted by Ibrahim Yusuf Khan (Accused No.7) and Mohan Malla (Accused No.6). Initially, Ibrahim Khan (Accused No.7) gave two blows by means of an axe on the neck of the deceased and, thereafter, fired at him. Upon being shifted to the hospital, the deceased was declared dead.

2.7 The first informant lodged a report against the Applicants and the abovenamed persons, narrating the circumstances which led to the enmity between the deceased, the attempts allegedly made at the life of the deceased, the apprehensions which the deceased perceived and narrated to her as well as the complaints lodged by the deceased, in the past, with the police giving voice to those apprehensions. The first informant also alleged that the Applicants and the co-accused had initially approached one Sagar Rathod to eliminate the deceased. Sagar Rathod had, however, backed out and apprised the deceased that the Applicants, Deepali Bhilare (Accused No.2) and Mubin Inamdar (Accused No.3) had contacted him to kill the deceased. Few days prior to the occurrence, in a raid conducted by the police at the factory of Suraj Agarwal (Accused No.1), arms were recovered and the Applicants were arrested. Thus, the first informant alleged that the Applicants and the co-accused killed the deceased by hiring contract killers. The First informant thus lodged the report leading to the registration of C.R.No.487 of 2020 on the very day of the occurrence.

2.8 Investigation commenced. During the course of investigation, Suraj Agarwal (Accused No.1) came to be arrested on 26th October, 2020 and Kadar Inamdar (Accused No.4) came to be arrested on 23rd November, 2020. In all nine accused came to be arrested. As the investigation revealed the complicity of the Applicants and the co-accused, charge sheet came to be lodged for the offences

punishable under Sections 120B and 302 read with Section 34 of the Penal Code and Sections 3 and 4 read with Section 25 and 27 of the Arms Act, 1959.

3. The Applicant – Accused No.1 has preferred this Application contending inter alia that he has been roped in on the basis of mere surmises and conjunctures. Neither there is material to show that the Applicant participated in the actual assault, nor any overt act is attributed to the Applicant. The allegations of the Applicant having hatched the conspiracy to kill the deceased is not at all borne out by the material collected during the course of investigation. Reliance by the prosecution on the alleged facebook conversation between the deceased and Sagar Rathod is stated to be wholly untenable as there is no material to show the retrieval of the data by the Investigating Officer. Nor a certificate under Section 65B of the Indian Evidence Act, 1872 is produced. In any event, as the investigation is complete for all intent and purpose, further detention of the Applicant is not warranted.

4. The Applicant – Kadar Inamdar (Accused No.4) has also sought bail on the ground that the Applicant had been implicated on the basis of suspicion only. There is no material to show any participation on the part of the Applicant, either in the alleged conspiracy or the actual assault. Recovery of arms at the premises of the Applicant – Suraj Agarwal (Accused No.1) has no nexus with the incident in question. Even otherwise, arms were not found in the possession of the Applicant, nor he was present thereat. Reliance on the alleged facebook conversation between the deceased

and Sagar Rathod and the call data record showing conversation amongst the accused inter se, is allegedly of no avail to the prosecution.

5. The prosecution has resisted the Applications.

6. I have heard Mr. Nikam, learned Counsel appearing for the Applicant - Suraj Agarwal (Accused No.1), Mr. Aabad Ponda, Senior Advocate, appearing for Applicant - Kadar Inamdar (Accused No.4), and Mrs. Pai, learned Public Prosecutor for the State, at length. With the assistance of the learned Counsel for the parties, I have perused report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it, including the FIR and the statements of the witnesses which were specifically relied upon by the prosecution.

7. Mr. Nikam, learned Counsel appearing for the Applicant - Suraj, submitted that in the context of the distance between the place of occurrence and the police station, lodging of the FIR after about 8 hours of the occurrence can only be said to be a product of deliberation and concoction. In the FIR, diverse motives were attributed to multiple persons. Therefore, the omnibus allegations made against the Applicant - Suraj, along with the co-accused, do not make out a prima facie case against the Applicant. Mr. Nikam further submitted that the investigating agency has not succeeded in collecting any credible material against the Applicant - Suraj.

8. Mr. Nikam laid emphasis on the fact that the Applicant - Suraj came to be arrested under 10 minutes of the lodging of the FIR as the Applicant - Suraj was at

the police station itself, in connection with another offence registered against him. As the Applicant was present at the police station since morning, the involvement of the Applicant, even in the alleged conspiracy is firmly ruled out. Nothing has been recovered at the instance of the Applicant. The alleged conversation on facebook between the deceased and Sagar Rathod is of doubtful character. There is no material which lends an element of credibility to the authenticity and genuineness of the transcript of the conversation, which the investigating agency presses into service. Further allegation of the prosecution that Sagar Rathod came to be kidnapped leading to registration of another offence against the Applicant, post arrest of the Applicant, is with a view to bolster up the instant false case against the Applicant.

9. Mr. Nikam made an endeavour to assail the authenticity and genuineness of the letters dated 5th October, 2019 and 22nd October, 2020 allegedly addressed by the deceased expressing apprehension of harm at the instance of the Applicant and the co-accused. It was submitted that the letter dated 22nd October, 2020 was not at all addressed by the deceased, and, even otherwise, it can be said to have been addressed to take undue advantage of the situation, post the registration of the offences under the Arms Act, vide C.R.No.482 of 2020, at Lonavala City Police Station. Inherent improbabilities of the allegations in the FIR in the said case were also sought to be pressed into service.

10. Mr. Ponda, learned Senior Advocate appearing for Applicant – Kadar

submitted that the Applicant – Kadar was not at all named in the alleged letter addressed by the deceased on 5th October, 2019. Mr. Ponda would further urge that it is not the prosecution case that the Applicant – Kadar was either the assailant or otherwise present in the vicinity of the scene of occurrence at the time the deceased was assaulted. Nor is it the prosecution case that the Applicant – Kadar was present at Gurukripa Distributors on 22nd October, 2020, when the arms were allegedly seized from the possession of Suraj – Accused No.1 in C.R.No.482 of 2020. In the said case, the Applicant – Kadar has been roped in merely on the statement of the co-accused that those arms were procured by the Applicant and his brother Mubin Inamdar (Accused No.3).

11. Mr. Ponda would further urge that the circumstance of telephonic conversations between the Applicant – Kadar and the co-accused, heavily relied upon by the prosecution, cannot be said to be of incriminating nature. The Applicant Kadar had been allegedly indulging in gambling (matka). Few crimes have been registered against the Applicant. The telephonic conversations between the Applicant Kadar and the co-accused, two of whom are his real brothers, therefore, cannot be pressed into service to establish alleged criminal conspiracy.

12. Mr. Ponda joined Mr. Nikam in assailing genuineness and authenticity of the alleged facebook conversation between the deceased and Sagar. Nonetheless, even in the said conversations, Sagar Rathod allegedly stated that Inamdar family was not

majorly involved in the alleged plot to kill the deceased. In any event, on the date of occurrence, the Applicant Kadar had no conversation with the co-accused Ibrahim Khan (accused No.7), who allegedly perpetrated the murderous assault.

13. In opposition to this, Ms. Pai, learned Public Prosecutor, submitted that the prayer of the Applicants is required to be considered in the light of the fact that the deceased was done to death in a broad daylight. Contract killers were hired. In the past, there were attempts on the life of the deceased. The deceased had sought intervention and protection of the law enforcement authorities as late as four days prior to the occurrence. There are witnesses including the wife and sister of the deceased, who have specifically adverted to the repeated threats given to the deceased, which the latter had related to them.

14. In a case of this nature, the material in the form of the acts of the accused prior to, at the time of, and subsequent to, the occurrence assume significance in inferring the existence of criminal conspiracy. Therefore the submissions on behalf of the Applicants that there is no direct evidence, is of no significance, submitted Mrs. Pai.

15. I have given anxious consideration to the rival submissions. To begin with, the prosecution does not allege that the Applicants – Suraj and Kadar were the assailants. Allegedly, they are the main confederates in the conspiracy to eliminate the deceased.

16. It is trite conspiracy is hatched in secrecy. It is executed in darkness. It is rarely possible to establish the conspiracy by direct evidence. Often, both the existence of the conspiracy and its objects are matters of inference to be drawn from the circumstances and the conduct of the accused before, at the time, and post commission, of the offence. There may be plurality of means adopted by confederates for the commission of the offence. Persons may be members of a single general conspiracy, even though one or few members thereof, may be ignorant of the identities of other conspirators who may have different roles to play. It is not peremptory that all the conspirators need to agree to play the same or an active role. Nor is it necessary that all the conspirators should agree to the common purpose at the same time. Thus, one who commits an overt act in pursuance of the conspiracy is guilty and also the one who gives tacit consent to the object of the conspiracy and goes along with other conspirators without committing any overt act, while other confederates give effect to the conspiracy, even though he has not played any active role.

17. In the case at hand, the circumstances pressed against the Applicants are required to be considered with a view to ascertain whether a prima facie case is made out against the Applicants. Meticulous evaluation of the material and documentation of the prosecution case and defence version are neither permissible nor warranted at this stage.

18. The circumstances pressed against the Applicants are : a strong animus

to eliminate the deceased on account of the inimical nature of the relationship for diverse reasons, the apprehension entertained and expressed by the deceased that his life was at risk at the hands of the Applicants and the co-accused, the alleged abortive attempts on his life, recovery of cache of arms, including fire arms, at the premises of Applicant – Suraj, the alleged conversations between the deceased and Sagar Rathod, whom the Applicants had allegedly initially approached to eliminate the deceased and the call detail records which indicate that the Applicant had telephonic conversations inter se, and with the co-accused.

19. In the letter dated 5th October, 2019 addressed by the deceased to Police Inspector, Lonavala City Police Station, the deceased made a grievance that since 7-8 months prior thereto, unknown persons were keeping a vigil on him and had also pointed a revolver at him, in respect of which he had informed the police. In the said letter, the deceased also referred to the message received from Sagar Rathod that Suraj – Accused No.1, Deepali Bhilare – Accused No.2 and Mubin Inamdar – Accused No.3 had approached Sagar Rathod to kill the deceased and, upon his refusal, a contract to kill has been given to two persons from Mumbai. Since 15 days prior to the said letter, the deceased felt that he was being pursued again and, therefore, expressed an apprehension that he would be killed by Suraj – Accused No.1, Deepali – Accused No.2 and Mubin – Accused No.3 by hiring contract killers.

20. At this juncture, it would be contextually relevant to note that the

purport of the transcript of the facebook chat between the deceased and Sagar Rathod is that the latter was approached by Suraj – Accused No.1 to kill the deceased. Though co-accused Rashid Inamdar – Accused No.8, Mubin Inamdar – Accused No.3, Kadar Inamdar – Accused No.4 and Deepali Bhilare – Accused No.2 were also involved in the plot, Suraj Agarwal – Accused No.1, was the principal conspirator. Two country made fire arms were procured by Suraj Agarwal - Accused No.1 with the assistance of Sadiq Bangali – Accused No.5, allegedly a notorious history sheeter. Sagar Rathod claimed that, after the identity of the deceased was disclosed as the person to be killed, he backed out. Sagar Rathod demanded money from the deceased and implored the deceased that his name should not be disclosed as the person who spilled the beans.

21. The submissions on behalf of the accused about the authenticity and genuineness of the transcript of the facebook chat do not deserve countenance at this stage. The question of admissibility and reliability of the transcript of the facebook chat would be a matter of trial. It is imperative to note that that in the letter dated 5th October, 1999 also, the deceased had referred to such communication having been received from Sagar Rathod. At this stage, the said transcript, prima facie, nails both the Applicants as the persons who conspired to kill the deceased and had, inter alia, approached Sagar Rathod for the said purpose.

22. The recovery of the cache of arms from the premises of Suraj Agarwal –

Accused No.1, leading to the registration of C.R.No.482 of 2020 for the offences punishable under Sections 3 and 4 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, is a factor which, at this stage, cannot be said to have no nexus with the subject crime. I find substance in the submission of Mrs. Pai that the said circumstance is required to be appreciated as a link in the chain of circumstances which may justify an inference of criminal conspiracy. Indubitably, the said crime was registered four days prior to the occurrence. Both the Applicants were named as accused in the said crime.

23. An endeavour was made on behalf of the Applicant – Suraj, to draw home the point that the letter dated 22nd October, 2020 was addressed by the deceased to falsely rope in the Applicant – Suraj, after the alleged seizure of the arms from the premises of the Applicant – Suraj became public. Had that been the only material, the submission may have carried some substance. There is material to indicate that since a couple of years prior to the occurrence in question, the deceased perceived threat to life and made a grievance to the authorities about the same. This factor lends prima facie credence to the prosecution version that the alleged recovery of arms made the deceased even more apprehensive.

24. In my view, the interval between the said letter dated 22nd October, 2020 and the date of occurrence assumes critical significance. Proximity of time is evident. It would be a matter for trial as to whether the contents of the letter dated 22nd

October, 2020 can be construed as a statement made by the deceased as to the circumstances of the transaction which led his death. However, element of proximity is prima facie made out.

25. The learned Counsel for the Applicants attempted to explain away the repeated telephonic conversations between the Applicants inter se, and with the co-accused as a routine conversation between the persons who are otherwise related to or acquainted with each other. At this stage, it would suffice to note that it appears that there were multiple conversations especially between the Applicants – Suraj and Kadar, and Suraj and Deepali Bhilare – Accused No.2. On the day of the occurrence also, apparently there were conversations between the Applicants – Suraj and Kadar. There is further material to show that the Applicant Kadar appeared to have had telephonic conversations with the principal assailant – Ibrahim Khan – Accused No.7. Likewise, co-accused Mubin – Accused No.3 allegedly had telephonic conversations with Ibrahim Khan – Accused No.7.

26. The aforesaid material, prima facie, lends support to the statements of Saumya Shetty, the first informant, and Ms. Seema Dalvi, the sister of the deceased, on the aspect that the Applicants were inimically disposed towards deceased and the latter apprehended that the Applicants and the co-accused would cause harm to him by hiring contract killers. It would be contextually relevant to note that Mr. Umesh Anant Pai, the owner of a cottage at Lonavala has stated that Mr. Santosh Desai,

caretaker of the Cottage, had let out the cottage to Mohan Malla -Accused No.6 from 13th October, 2020. He learnt that Ibrahim Khan – Accused No.7, the assilant and his associates, stayed in the said cottage upto 26th October, 2020. In the Memorandum dated 3rd August, 2021, Sadiq Bangali – Accused No.5 disclosed that he had given training of use of fire arms to the Applicants, Ibrahim Khan – Accused No.7 and Sagar Rathod and had shown the places where the training was allegedly given. At this stage, the aforesaid material makes out a prima facie case of contract killers having been hired to kill the deceased.

27. Though it may not be justifiable to take into account the statements of witnesses recorded in C.R.No.1090 of 2020 registered with Lonavala Police Station in connection with the alleged abduction of Sagar Rathod, the fact remains that the Applicant Suraj Agarwal and the co-accused herein, have been accused of having abducted Sagar Rathod on the night intervening 22nd September, 2020 and 23rd September, 2022.

28. In the totality of the circumstances, the element of criminal conspiracy to eliminate the deceased by hiring contract killers is prima facie made out. The Court cannot lose sight of the fact that the deceased was done to death in a broad day light. There is material to show that the deceased apprehended such an untoward occurrence and named the persons who were allegedly after him and, eventually, the worst fears came true. From this standpoint, the apprehension on the part of the

prosecution of tampering with evidence, in general, and harm to the prosecution witnesses, in particular, cannot be said to be unfounded.

29. I am, therefore, not persuaded to exercise the discretion in favour of the Applicants.

30. Hence, the following order :

ORDER

The Bail Applications stand rejected.

(N.J.JAMADAR, J.)