

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.37 OF 2022

Ajay @ Soni Kishan Varma] ... Applicant

Vs.

The State of Maharashtra] ... Respondent

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Mr. V.V. Gangurde with Mr. Satish B. Patil for the applicant.

Ms. Veera Shinde, A.P.P. for the State.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 23RD JUNE, 2022.

P.C.:-

1. The applicant came to be arrested in connection with C.R. No.I-645 of 2016 registered with Manpada Police Station, invoking Sections 302, 120(b), 201 and 34 of the I.P.C. and Sections 37(1), 135 of the Maharashtra Police Act, on 31/12/2016 and he remained incarcerated, despite the charge-sheet being filed compiling the material therein.

2. Heard Mr. Gangurde, learned counsel appearing for the applicant and Ms. Veera Shinde, learned A.P.P. for the State.

Learned counsel for the applicant would submit that the charge-sheet lacks any material connecting him to the offences with which he is charged and, since the trial will have to wait its turn, in absence of any apprehension of the prosecution that he will not face the trial and flee the course of justice, his incarceration as an undertrial for last six years is unnecessary.

3. With the assistance of learned A.P.P., I have perused the charge-sheet, which is placed on record.

4. The complainant Amit Patil reported to the Manpada Police Station on 21/12/2016, alleging that he is an active member of Shivsena and, on the same day at about 2.15 p.m., in front of the house of the informant in Village Kataigaon, Kalyan Shil Road, Dombivali, while he was sitting in a car in the driver's seat with his friend Vicky @ Vivek Omprakash Sharma, occupying the back seat, he heard a bullet being fired and when he looked back, he noticed that the smoke of the fired bullet was coming out of the car and when he approached the rear side of the vehicle, he found Vicky, lying in a pool of blood.

5. While reporting the matter to the police, he described the assailant as a person aged 32 to 35 years and with height of 5 ft. 5' approximately, and that he was wearing a maroon colour shirt. The assailant ran towards a paan shop with the pistol, where one

of his associates was present on a motorcycle, which he immediately started and sped away from the spot towards Shilphata. An attempt to chase them was unsuccessful. Vicky was then taken to hospital and was treated for the murderous assault.

6. The complainant has narrated the background for the incident as the Loksabha Election of 2014, who had actively participated in the election and, that is the reason, why Rajiv Patil and Vinod Patil, due to political rivalry, have hatched a conspiracy to kill him. He, therefore, suspected the murder at the hands of the accused persons. This resulted in registration of the subject C.R.

7. Pertinent to note that the informant did not give any description of the person, who was sitting on the motorcycle, awaiting the person, who shot at Vicky, to rush him away. In the supplementary statement of the complainant recorded on 24/12/2016, he attributed motive to the accused persons i.e. Rajiv Patil and Vinod Patil and he stated that the arrested person worked with the main accused persons and, there was a conspiracy to kill the deceased. He even alleged that the accused Rajiv Patil and Vinod Patil had also conspired to kill Satish Patil, Harish Patil and Sadanand Sante, who are his friends.

8. Since, the injured succumbed to the injuries, the

postmortem was conducted and the cause of death was assigned as “Hemorrhage and shock due to firearm injury” (Unnatural).

When learned A.P.P. is specifically asked to show the material against the present applicant in the charge-sheet, she referred to the statement of one Rohan H. Sawant, who is an eye-witness to the incident. When the said statement is perused, it is seen that he along with his friend Mayur was waiting at the bus stand at 1.45 p.m., when he heard a bullet being fired. On looking back, he noticed one unknown person with a pistol in his hand coming towards them. While running, he put the pistol in the left pocket of his jeans pant and he crossed them and ran ahead, where a red and black coloured Honda Stunner Motorcycle was waiting for him. He, mounted on the motorcycle and the person, who was on the driving seat, started the motorcycle, which was driven towards Shil Road. People around unsuccessfully attempted to chase them.

On the other hand, when they turned, they saw that the Honda City vehicle of Amit Patil was parked in front of his house and huge crowd had surrounded it. On ascertaining, the cause for the crowd, they found Vicky, friend of Amit Patil in an injured state, lying on the ground and blood was oozing from his head and spread all over. Similar statement of Mayur Sawant is also recorded.

9. The prosecution attribute that the person, who started the back and red motorcycle, is the applicant. When asked whether

any test identification parade has been conducted to establish the identity of the applicant to be the same person, who assisted the accused who fired at the deceased, in fleeing, learned A.P.P. states that there is no test identification parade conducted. Statement of another two witnesses Rajesh Patil and Abhishek Dogle, who also referred to the incident stating that one person wearing a maroon coloured shirt and blue pant opened firearm and also gave a version that the person waiting on the motorcycle, was wearing a light parrot green T. shirt and he had kept the vehicle in a running condition. However, none of the witnesses have been subjected to the identification parade for ascertaining the identity of the applicant.

10. Learned A.P.P. also states that some C.C.T.V. footages were collected, but there is no panchanama, under which it is taken into possession and, therefore, there is no recording of the incident. Although, there is a recovery of the motorcycle from the applicant vide memorandum panchanama dated 04/01/2017, but again there is nothing to connect that it was the same motorcycle bearing No.MH-05-GG-0042, which was used in the incident. Barring that a black and red motorcycle was recovered under the memorandum panchanama, on arrest of the applicant, there is no material in the charge-sheet to connect the motorcycle recovered from him with the alleged incident.

11. In the wake of the aforesaid material compiled in the

charge-sheet though the incident is a disquieting one, where the deceased was shot in broad daylight and though it is alleged that the main accused persons had hatched the conspiracy to kill the deceased out of the political rivalry, the co-accused Rajesh Patil, Mohd. Mohiuddin Shaikh, Roshan Mishra and Nagesh Sonawale, are already released on bail.

12. In the wake of the material compiled in the charge-sheet, which *prima facie* cannot be said to be sufficient to indict the applicant, in the offences under Sections 302 and 120(b) of the I.P.C. and since there are no material in the charge-sheet, to establish that the applicant was part of the alleged conspiracy, he deserves his release on bail. Another ground which persuade me to confer his freedom upon him, is the fact that he remained incarcerated since December, 2016 and down the line, for more than five years, the trial has not yet commenced. He may take the consequences of the material contained in the charge-sheet, when he faces the trial, but his further incarceration without trial, would be violative of fundamental right to life and liberty.

13. Needless to state that the aforesaid observations are made limited to the purpose of releasing the applicant on bail and shall not influence the trial court while determining the guilt of the accused on being tried. Hence, the following order;

ORDER

- (a) The applicant – **Ajay @ Soni Kishan Varma** shall be released on bail in C.R. No.I-645 of 2016 registered with Manpada Police Station, District Thane on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The applicant shall attend the trial court regularly, unless exempted.

14. The application is allowed in the aforestated terms.

15. All parties are directed to act on the downloaded copy of the order supplied by the advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]