

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.429 OF 2022
WITH APPLN/2475/2022 IN WP/429/2022**

**RAMESH CHANDRASINGH PARMAR
VERSUS
THE STATE OF MAHARASHTRA**

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**Advocate for Petitioners : Mr. C. C. Deshpande
APP for Respondents: Mr. S. P. Sonpawale**

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CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2023

PER COURT :

1. This Petition takes exception to the order passed by the learned Additional Sessions Judge, Dhule dated 28.01.2022 in Sessions Case No. 217 of 2019 rejecting application for discharge filed under Section 227 of the Code of Criminal Procedure.

2. Petitioner is accused no. 4 in Sessions Case No. 217 of 2019 facing trial for the offences punishable under Sections 302, 120-B, 201, 34 of the Indian Penal Code. It is alleged against all accused that they conspired to eliminate deceased. Application has filed application below Exh. 74 stating that there is no direct or circumstantial evidence brought on

record by the prosecution to connect him with the crime. It is also contended that in test identification parade he had not identified by the witnesses. On these two grounds it is contended by the Petitioner that there is no evidence in order to hold him guilty for the commission of alleged offence and hence, he deserves discharge.

3. The said application was opposed by the prosecution and by passing impugned order learned Trial Court has observed that here is the case wherein offence of Section 302 is charged against accused with the aid of Section 120-B and 34 of IPC and that sim cards which were used in the crime are in the name of co-accused were obtained by the present Petitioner, at this stage, he cannot be said to be innocent.

4. Learned Counsel for the Petitioner states that the statement of two witnesses who have said about the Petitioner having obtained these two sim cards did not show culpability of the Petitioner in this crime. According to him, if the said statements are accepted it shows that the sim cards were obtained by the Petitioner by giving his Adhar card. He further

referred to the document showing that the sim cards were issued not in the name of Applicant but in the name of Hansaben Pawar. It is further submittd that if the sim cards were obtained on the basis of the Adhar card of the Petitioner, the question that sim card being issued in the name of someone else does not arise. In support of his submissions, he placed reliance on the judgment of Hon'ble Apex Court in the case of Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra, (2008) 10 SCC 394.

5. Hon'ble Apex Court in the said judgment cited (supra) has held that for the purpose of discharge of an accused the broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. In the instant case, from *prima facie* perusal of the material placed on record it is clear that the allegation against all the accused is about hatching conspiracy to kill deceased. It is further case of prosecution that sim cards i.e., one find with deceased and another with co-accused were procured by present Petitioner. It is further case that there was transaction/contract between deceased and

accused through these sim cards. Thus, at this stage, it cannot be said that procurement of sim cards is not relevant fact in the pending trial.

6. With regard to the conspiracy in the said judgment, it is observed that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence, hence, the conspiracy needs to be decided on the basis of circumstantial evidence brought on record. At this stage, if the contention of learned Counsel for the Petitioner is accepted then this amounts to conducting a mini trial before recording of evidence. Pertinently, if the statements of two witnesses go uncontroverted then the fact will stand proved that the present Petitioner is the person who had obtained said sim cards. Suffice it to say that this is not the case there material on record if it still rebutted it is not possible to reasonably convict the Petitioner for crime.

7. Having considered *prima facie* facts on record, this Court does not find present case to be one where there is no reasonable possibility of conviction of Petitioner if evidence on record goes uncontroverted.

In fact there is material on record which would be relevant to be considered during trial. Hence, no infirmity is found in the impugned order. Hence, Petition stands dismissed.

8. Learned Counsel for the Petitioner states that the trial is stayed by the order of this Court. He, therefore, seeks further stay to the trial till 06th July, 2023 to challenge the order before Hon'ble Apex Court.

9. Learned APP opposed the said request on the ground that trial is pending since the year 2019.

10. Since the stay to the trial was in force for about a year, in view of this Court extension of the same for the period till 06th July, 2023 may not change the position materially. Hence, interim stay granted to continue till 06th July, 2023.

11. It is clarified that unless Hon'ble Apex Court continues the stay of the trial it is open for the learned trial Court to proceed with the trial from 07th July, 2023.

(R.M. JOSHI, J.)