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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1228 OF 2021

Rajesh Alias Pandit Kamal Agrawal … Applicant
V/s.
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.586 OF 2022
IN
BAIL APPLICATION NO.1228 OF 2021

Atit Deven Shah … Applicant
In the matter between
Rajesh Alias Pandit Kamal Agrawal … Applicant
V/s.
The State of Maharashtra … Respondent

Mr Nitin Sejpal with, Ms Pooja Sejpal with, Ms Akshata Desai, and Mr Krunal Thakkar for the applicant in BA.

Mr Niranjan Mundargi i/by Mr Gaurav P. Thote, for the applicant in IA.

Ms. Veera Shinde, APP for the respondent/State.

Mr. S.K. Dolas, H.C., Crime, Pune City is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 21, 2023

P.C.:

1. This is an application under section 439 of the Criminal Procedure Code, 1973, in connection with C.R. No.10 of 2018 registered with Deccan Police Station for offences punishable under sections 302, 307, 120-B, 201 of the Indian Penal Code, 1860 and section 3 read with sections 25 and 27 of the Indian Arms Act, 1959 and section 37(1) read with 135 of the Maharashtra Police Act, 1951 and section 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

2. The prosecution case, in short, is as under:

Deceased Deven Shah was a builder and developer. Informant Atit Deven Shah is the son of the deceased Deven Shah. Deven Shah wanted to purchase land from the village of Darivali. Applicant accused No.6-Nitin Dangat was known to deceased Deven Shah. He introduced accused No.7 Sameer Sadavarte to Deven Shah. Sameer agreed to help deceased Deven in the consolidated transaction of 400 acres of land in village Darivali, and a memorandum of understanding (MoU) was executed on 18th April 2008. Till 2012 the transaction of sale of around 152 acres of land was done. On 25th August 2010, deceased Deven paid Rs.3 crore to accused No.6-Nitin Dangat as a commission for land under MoU. However, since the transaction could not be completed, accused No.6-Nitin Dangat was required to refund Rs.3 crore and accused No.7-Sameer was required to refund Rs.2.25 crore paid as commission. Accused No.8-Rajesh Agrawal intervened and agreed to settle the dispute between Deven Shah and applicant Nitin Dangat regarding the refund of Rs.3 crore and Rs.1.05 crore was to be paid as commission for settling the dispute to accused No.8-Rajesh Agrawal. Thereafter, Nitin Dangat agreed to complete the transaction of village Darivali instead of paying back Rs.3 crore. Accused No.8-Rajesh Agrawal and accused No.1-Ravindra Chorge were to be paid Rs.1.05 crore towards the said settlement. Accused

No.1-Ravindra Chorge and accused No.8-Rajesh Agrawal, with the intervention of gangster Chhota Rajan, started pressurizing Deven Shah. Deven Shah paid the amount of Rs.25,00,000/- and Nitin Dangat paid the amount of Rs.50,00,000/- and the amount of Rs.30,00,000/- remained as balance. Accused No.8-Rajesh, Agrawal demanded an amount of Rs.30,00,000/- from Deven Shah. Accused Nitin gave a cheque of Rs.3 crore by way of security to deceased Deven and told accused No.1 Ravindra Chorge and accused No.8-Rajesh Agrawal that he paid Rs.3 crore to Deven Shah. However, the cheque was dishonoured. On knowledge of the payment, accused No.1-Ravindra and accused No.8-Rajesh started demanding their balance of Rs.30,00,000/-. Deceased Deven Shah demanded an amount of Rs.3 crore of applicant accused No.6-Nitin, and Rs.2.5 crore of accused No.7-Sameer Sadavarte for the failure of the land transaction, but they refused. In order to avoid the payment of the said amount of commission, it is alleged that they, along with accused No.1-Ravindra and accused No.8-Rajesh Agrawal, hatched a conspiracy to kill Deven Shah. It is contended that accused No.6-Nitin paid the amount of Rs.2,00,000/- by RTGS to accused No.8-Rajesh, who then supplied the pistol to accused No.1-Ravindra. Then on 13th January 2018, at around 23:10 hours, accused No.1-Ravindra and accused No.2-Rahul went to the house of deceased Deven armed with pistols, and in the presence of informant Atit, they both fired at Deven, and Deven died.

Based on the report given by Atit Shah, a crime was registered, and an investigation began. It was found that the organized crime syndicate headed by accused No.5-Sunil Alias

Sonu Rathod was involved in the commission of the crime and accused of pecuniary gain, committed the present crime and accordingly, the proposal under section 23(1)(a) for pre-sanction was moved, and sanction was granted on 23rd March 2018 and provisions of MCOC Act were invoked. After completing the investigation and obtaining sanction under section 23(2), the present charge sheet was filed.

3. The applicant preferred an application for bail before the Special Court under the Maharashtra Control of Organised Crime Act, 1999 (hereafter, the MCOC Act, for short). The said application was rejected vide order dated 1st June 2020. The applicant has, therefore, filed a present application under section 439 of the Criminal Procedure Code, 1973.

4. Learned advocate for the applicant submitted that considering the material in the charge sheet, no prima facie offence is made out against the applicant either under the Indian Penal Code or under the MCOC Act. Accepting the statements of co-accused under section 18 of the MCOC Act, no case is made out against the applicant. Merely because the amount of Rs.2,00,000/- is alleged to be transferred to the applicant's account, there is no material on record to indicate that the applicant was a member of a conspiracy hatched by the co-accused. Except for confessional statements of co-accused, there is no material against the applicant. The Sessions Court has discharged co-accused Sameer Sadavarte by order dated 26th April 2023. The role attributed to Sameer Sadavarte is similar to the applicant's; therefore, the applicant deserves to be released on bail. It is submitted that the applicant was arrested on 19th June 2018. It is unlikely that the trial will be completed in the near future. Therefore, the applicant deserves to be released on bail. In support of his submission, he relied on the following judgments:

a. Iqbal Ahmed Kabir Ahmed vs. The State of Maharashtra reported in 2021 ALL MR (Cri) 3105.

b. Angela Harish Sontakke vs. State of Maharashtra reported in (2021) 3 SCC 723.

c. Chintan Vidyasagar Upadhyay vs. The State of Maharashtra in Special Leave to Appeal (Crl.) No.2543 of 2021.

d. Indrani Pritim Mukerjea vs. Central Bureau of Investigation And Another in Special Leave to Appeal (Crl.) No.1627 of 2022.

e. Union of India vs. K.A. Najeeb reported in 2021 ALL MR (Cri.) 1587 (S.C.).

f. Ajit Bhagwan Tiwde vs. State of Maharashtra reported in 2022 ALL MR (Cri.) 1687.

5. Per contra, learned APP for the State and learned advocate for the victim invited my attention to the confessional statements of the assailants who attributed an active role to the applicant. Material on record indicates the transfer of Rs.2,00,000/- by co-accused Nitin Dangat in the applicant's account. The applicant had a motive to conspire to commit the murder of the deceased since the deceased had not paid the applicant's commission for the settlement of his dispute. The chart depicting telephonic contact between accused persons indicates a conversation between the applicant and the assailants between 1st April 2017 and 12th January 2018. The conversation between the co-accused and the applicant is also on record. The role attributed to Sameer Sadavarte differs from the applicant's. Therefore, it is submitted that the application deserves to be rejected.

6. I have carefully scrutinized the charge sheet, affidavit-in-reply filed by the prosecution and material placed by the applicant on record. On prima facie reading of the material as a whole, it appears that the deceased Deven Shah was a builder. A memorandum of understanding (MoU) was executed between the deceased Deven Shah and the co-accused on 25th August 2010 as regards 400 acres of land. In 2012, more transactions of 152 acres of land took place between the deceased and co-accused Sameer Sadavarte with the help of co-accused Nitin Dangat. Thereafter, co-accused Nitin Dangat withdrew from the said transaction. Therefore, Samir Sadaravte and Nitin Dangat were required to repay the amount of Rs.3 crore and Rs.2.25 crore, respectively, to the deceased towards the advance commission they accepted.

7. The confessional statements of Ravindra Chorge and Rahul Shivtare (assailants) were recorded. Ravindra Chorge alleged to have retracted his confession, but the effect of such retraction of a confessional statement by Ravindra Chorge needs to be considered at the time of trial. At this stage, confessional statements of two assailants who fired bullets at the deceased indicate the applicant's role. Ravindra Chorge, in his confessional statement, referred to the applicant's involvement by stating that he used to meet the deceased at the instance of the applicant. He stated that the applicant told him that the deceased was not receiving his calls. According to the prosecution, Ravindra Chorge acted on the applicant's instructions.

8. Moreover, statements of the witnesses Vijay Hazare, Vitthal Nimbalkar, Prakash Vighne, and Kishor Aware indicate the nexus of the applicant with the organized crime syndicate involved in the incident. The material on record prima facie indicates that Deven Shah hired the services of the present applicant and other co-accused to settle the dispute with Nitin Dangat. The cheque issued by Nitin Dangat for returning the commission amount was not honoured. However, the present applicant and other co-accused kept insisting that the deceased, Deven Shah, pay the amount he agreed to pay them to settle the dispute. Despite their efforts, the deceased did not pay the balance amount and, therefore, the applicant and the other two co-accused hatched a conspiracy to kill Deven Shah and arranged firearms.

9. Nitin Dangat transferred the amount of Rs.2,00,000/- by RTGS in favour of the applicant. The applicant arranged a pistol and a round which was given to Ravindra Chorge. The applicant gave some amount to Ravindra Chorge for executing the killing of the deceased Deven Shah.

10. The prosecution has placed on record CDR which indicates that there were calls between the applicant and assailants between 1st April 2017 and 12th January 2018.

11. By order dated 3rd January 2023, the Co-ordinate bench of this Court rejected the bail application of Nitin Dangat in Bail

Application No.1537 of 2020. The Hon'ble Apex Court, by order dated 13th April 2023, confirmed the order of rejection of bail of Nitin Dangat.

12. In so far as the submission that the Sessions Judge has discharged Sameer Sadavarte is concerned, in my opinion, on careful perusal of the order of discharge, it prima facie appears that the Sessions Judge while discharging Sameer Sadavarte observed as under:

> **"17.** .... On the date of incident also accused Sameer Sadavarte had seven to eight phone calls with the deceased. If really he would have been a part of conspiracy to commit murder, he must not established contact with the deceased on that day, that too repeatedly."

13. In my opinion, the reasoning is contrary to well-established law on the point of conspiracy. Since the basis of the discharge of Sameer Sadavarte is based on flawed reasoning, the applicant is not entitled to the benefit from such a discharge order. Moreover, the applicant received an amount of Rs.2,00,000/- from Nitin Dangat. The applicant arranged firearms which were given to assailant Ravindra Chorge. According to the prosecution, the applicant is a partner of Nitin Dangat. Therefore, the applicant's role is different from Sameer sadavarte. Hence, he is not entitled to the benefit from the discharge order of Sameer Sadavarte.

14. In so far as the last argument on behalf of the learned advocate for the applicant that the applicant has been in jail since 19th June 2018 for the last five years is concerned, there cannot be a dispute about the proposition of law laid down by aforesaid judgment. From the aforesaid decisions, it emerges that speedy trial is the constitution's mandate and delay in certain cases may entitle the accused to be enlarged on bail. However, it would depend upon the nature of the crime, the gravity of the offence and the delay committed by the accused or prosecution. In this context, I may profitably refer to the decision rendered in the case of **Madheshwardhari Singh And Another vs the State of Bihar** reported in AIR 1986 Pat 324, wherein the Full Bench of Patna High Court laid down as follows:

> " Laying down of an outer time limit to concretise the right to a speedy public trial is envisioned both by principle and precedent. A callous and inordinately prolonged delay of seven years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason) in investigation and original trial for offences other than capital ones plainly violates the constitutional guarantee of a speedy public trial under Art.21. Unless the fundamental right to speedy trial is to be whittled down into a mere pious wish, its enforceability in Court must at least be indicated by an outer limit to which an investigation and the trial in a criminal prosecution may ordinarily extend. Holding otherwise would be merely paying lip service to a precious right whilst denuding it of the benefits of its actual enforceability.
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> The fixation of the outer limit of seven years must not be misunderstood or misconstrued to mean that a delay of less than seven years would not, in any case, amount to prejudice. Indeed, what is sought to be laid down is the extreme outer limit whereafter grave prejudice to the accused must be presumed, and the infraction of the constitutional right would be plainly established. Nor is it sought to be laid down that in a lesser period than seven years an accused person would not be able to establish circumstances pointing to the patent" prejudice which may entitle him to invoke the guarantee of speedy public trial under Art.21. What indeed is sought to be laid down is that beyond this period of seven years the continuation of the

> investigation and trial would bring in the weightiest presumption that the enshrined right of speedy public trial is violated and the prosecution should be halted in its tracks. This would per se be indicative of prejudice. Thereafter the burden would automatically shift heavily on to the shoulders of the State to show that such grave delay was either entirely the handiwork of the accused himself or was occasioned by such special and exceptional circumstances so as to merit condonation thereof."

15. In the aforesaid judgment, the Full Bench fixed an outer time limit of seven years. However, they indicated a note of caution that it should be misconstrued to mean that delay of less than seven years would not, in any case, cause prejudice to the accused.

16. In view of the aforesaid law laid down in various decisions cited on behalf of the applicant, it is clear that the right to a speedy trial is the fundamental right. If the trial is delayed, it would amount to a denial of justice and entitle an accused to be admitted to bail. However, a significant cause of delay, whether attributable to the prosecution or the accused, has to be borne in mind at the time of exercise of judicial discretion for the grant of bail. The role played by the accused in causing delay is also one of the factors which has **a** bearing while considering bail application on the ground of delay. In the facts of the case, according to the prosecution, the pendency of the discharge application filed by Sameer Sadavarte for three years resulted in a delay. The said delay is not attributable to the applicant. However, considering the nature and gravity of the offence, in my opinion, the applicant's right to get a speedy trial can be balanced by directing the Special Court to decide the trial as expeditiously as possible.

17. Considering the restrictions under section 21(4) of the MCOC Act and the material placed on record, no case is made out for a grant of bail.

18. The bail application is, therefore, rejected.

19. The Special Court is directed to decide the trial as expeditiously as possible.

20. In view of the disposal of the bail application, the interim application does not survive. The same stands disposed of.

(AMIT BORKAR, J.)