

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

CRIMINAL BAIL APPLICATION NO. 2124 OF 2022

Suresh Jagubhai Patel @ Sukha PatelApplicant
Versus
The Union of India & Anr.Respondents

**WITH
INTERIM APPLICATION NO. 71 OF 2023
IN**

CRIMINAL BAIL APPLICATION NO. 2124 OF 2022

Rashmiben w/o. Late Ajay PatelApplicant
Versus
The Union of India & Anr.Respondents

Mr. Rajiv Chavan Senior Advocate a/w. Mr. Pravin Bhoi a/w Ms. Shweta R. Rathod i/b Elixir Legal Services for Applicant.
Mr. Hiten S. Venegavkar for Respondent No.1.
Mr. Majeed Memon a/w Mr. Tapish Jain a/w Mr. Mateen Qureshi a/w Mr. Khalil Girkar h/f. Majeed Memon and Associates for Intervenor.
Mr. A.A. Palkar, APP for the State.

CORAM : G. A. SANAP, J.

DATE : 10th NOVEMBER, 2023.

P.C. :

01] The applicant/accused in Crime No.39/2018, registered with Nani Daman Police Station for the offences punishable under

Sections 302, 120B, 468, 471, 420 read with Section 34 of the Indian Penal Code, 1860 (for short “IPC”) and Sections 25 and 27 of the Arms Act, 1959, has made this application for bail.

02] It is the case of prosecution that pursuant to the conspiracy hatched by the accused persons, one Ajay Patel was murdered on 1st April, 2018. It is stated that this applicant was the main conspirator behind the murder. It is the case of prosecution that pursuant to the conspiracy on 1st April, 2018 at about 9:00 p.m., accused Mohammad Hasan, Rashid Gulam, Noor Moajam and two others fired bullets on Ajay Patel and his companion namely Dhirendra Patel. In this assault, they died. Accused - Jay Prakash Pandey surrendered before the Court on 30th May, 2018 and admitted his involvement in the crime, being the main conspirator behind the murder, on account of his financial dispute with deceased Ajay Patel. In this crime, number of supplementary charge-sheets were filed. This applicant/accused was named in the 7th supplementary charge-sheet. It is the case of prosecution that there was business rivalry between the applicant and the deceased Ajay Patel. In the past also, attack was made on the life of deceased Ajay Patel, but in the said attack, he survived. Arising out of the said incident, a Crime bearing No.139/2017 was

registered under Section 307 read with Section 35 of the IPC against this applicant and others. It is the case of prosecution that on 21st October, 2019 when the police went to the office of this applicant/accused for inquiry, he ran away from his office. On 28th October, 2019 and 29th October, 2019, his house and office were searched. The documents recovered in the search indicated the payment made by this applicant/accused to the remaining accused. The applicant/accused was arrested on 23rd February, 2020 with co-accused Sajid Ali at Mohali, Punjab. After his arrest, at his instance, a revolver was recovered from the garage of his brother-in-law namely Ketan Patel, who is also co-accused. The materials collected during the investigation revealed the complicity of this applicant/accused in the crime.

03] Learned Senior Advocate Mr. Rajiv Chavan for the accused submitted that in this case, the main accused Jay Prakash Pandey @ Pakya has admitted his role as prime conspirator with the other accused in the commission of crime. Learned Senior Advocate submitted that for one and half years, the involvement of this accused was not shown in this crime. Learned Senior Advocate

submitted that the applicant/accused was not present on the spot, when the assailants shot the deceased Ajay Patel and his companion. Learned Senior Advocate submitted that in the 7th supplementary charge-sheet, his name was shown as an accused in this crime. Learned Senior Advocate pointed out that the Investigating Officer by name Mr. Dhanaji Dubaria had doubt that at the instigation of the applicant/accused, the complaint of corruption was lodged against him, which ultimately led to his arrest in the said crime. Learned Senior Advocate submitted that the Investigating Officer Mr. Dhanaji Dubaria, therefore, had grudge against him and in order to take revenge, falsely implicated him in this crime. Learned Senior Advocate took me through the record and pointed out that in the first charge-sheet filed by the prosecution, it was contended that accused Jay Prakash Pandey @ Pakya had killed Ajya Patel in view of his financial dispute with Ajay Patel. It is pointed out that this story of the prosecution went on till filing of three subsequent supplementary charge-sheets. Learned Senior Advocate submitted that the applicant/accused had an apprehension that due to grudge against him by the Investigating Officer, the Investigating Officer may kill him in fake encounter and therefore, he fled away. Learned

Senior Advocate submitted that the documentary evidence relied upon to support the money transaction may not go against the accused. Learned Senior Advocate submitted that, if the accused wanted to kill the deceased through the co-accused, then he would not have made payment to them by bank transaction. Learned Senior Advocate submitted that there was business rivalry between the applicant/accused and Ajay Patel and therefore, on the basis of this business rivalry, the prosecution has put-forth this as a motive for commission of this crime. Learned Senior Advocate submitted that most of the payments, shown to have been made by this accused to the co-accused, were much prior to the date of the incident. It is pointed out that this material does not indicate that the money was paid to the co-accused for killing the deceased. Learned Senior Advocate further submitted that the Call Data Record (CDR), relied upon by the prosecution, indicates that due to business dealings of the accused with the co-accused, he was in their contact. It is pointed out that the calls are for a period of three years prior to the incident. Learned Senior Advocate submitted that the place from where the revolver was allegedly recovered at the instance of this accused belongs to Ketan Patel and the said premises were searched on three

occasions by the Investigation Officer prior to this recovery. Learned Senior Advocate submitted that the accused for a period of two years would not keep such a weapon in the garage of Ketan Patel. Learned Senior Advocate further submitted that while opposing the bail application of one accused, the Investigating Officer had filed a reply dated 12th February, 2020. This reply would indicate that he had grudge against the applicant. Learned Senior Advocate further submitted that the documents recovered pursuant to the search warrant appears to be manipulated, because the search warrant was obtained on 5th October, 2019 and the search was actually conducted on 28th October, 2019. Learned Senior Advocate further submitted that the documents, recovered during the search despite direction from the Magistrate, were not produced before the Magistrate. Learned Senior Advocate submitted that, therefore, this creates doubt about the bonafides of the said recovery. Learned Senior Advocate submitted that the prosecution cannot now rely upon the statement of the co-accused Rashid Murtuza, who is no more. Learned Senior Advocate submitted that when he became approver, his statement was recorded. Learned Senior Advocate submitted that this statement cannot be made use of by prosecution for any purpose

in view of the settled position in law as to the admissibility of the evidence of the approver. Learned Senior Advocate submitted that on account of business rivalry, there was animosity between the accused and the deceased and therefore, he has been falsely implicated in this case. Learned Senior Advocate submitted that this applicant/accused had given evidence against Ajay Patel in a serious offence of murder of Dipak Patel committed by him in the year 2014 and therefore, he had grudge against him. Learned Senior Advocate submitted that in the teeth of shaky evidence relied upon by the persecution against the accused, his further detention is not necessary. It is submitted that case is not likely to complete in near future. Learned Senior Advocate further submitted that the accused is ready to abide by the conditions that may be imposed by this Court.

04] Mr. H.S. Venegavkar, learned Special Standing Prosecutor (for short “SSP”) for the prosecution submitted that in this case, there are 14 accused persons. It is pointed out that 3 accused are still absconding. Learned SSP submitted that accused Nos.1 to 3, who were the shooters of the deceased, are still absconding. Learned SSP submitted that accused No.5 – Jay Prakash Pandey and accused

No.12 - Sajid Ali have admitted that they have contacted and arranged the shooters from various parts of the country. Learned SSP submitted that investigation revealed that accused – Jay Prakash Pandey at the instance of this accused, who is the main conspirator, surrendered before the Court and admitted his involvement in the crime, being the main conspirator, just to mislead the Investigating Officer. Learned SSP submitted that accused Nos.6 to 14 have played significant role in the commission of crime. Learned SSP submitted that this accused has criminal antecedents and therefore, he is not entitled to get bail. Learned SSP submitted that for the purpose of harboring the shooters, false documents were created while securing the premises. Learned SSP submitted that there is ample evidence in the form of CDR to connect this accused in this crime. Learned SSP further submitted that this accused was absconding for two years. It is pointed out that he was declared as proclaimed offender. Learned SSP submitted that when the police team tried to apprehend him in Mohali, he opened fire on the police team and in this connection, a crime has been registered against him. Learned SSP submitted that there is ample evidence to show that he has made payments to the co-accused during this period. Learned SSP submitted that the

prosecution has collected ample evidence to establish the complicity of this accused in this crime as prime accused. Learned SSP submitted that prior to this incident, an attempt was made on the life of Ajay Patel by this accused and others and for that purpose an offence, being Crime No.139/2017 under Section 307 read with Section 34 of the IPC, was registered against them. Learned SSP submitted that there is ample evidence to show that the deceased was his business rival and therefore, the conspiracy was hatched to kill him. Learned SSP submitted that the evidence of the prosecution has commenced and one witness was examined after July, 2023. Learned SSP submitted that this accused is danger to the witnesses as well as to the society. Learned SSP submitted that if he is released on bail, then he would definitely tamper with the prosecution evidence and threaten and pressurize the prosecution witnesses. Learned SSP submitted that all these facts have been dealt with by this Court (Coram : Smt. Bharati Dangre, J.) while deciding the bail application made by Ketan Patel dated 26th August, 2021. Learned SSP submitted that, therefore, this applicant/accused is not entitled for bail.

05] Learned advocate Mr. Majeed Memon appearing for the intervenor submitted that the accused is a notorious person in Daman. Learned advocate submitted that he is prime accused in gruesome double murder in public place. Learned advocate submitted that several complaints were made by the deceased to the police about threat to his life at the behest of the accused. Learned advocate submitted that this accused has criminal antecedents and therefore, he cannot be released on bail.

06] At the very outset, it would be appropriate to note that while deciding the bail application, merits of the matter cannot be gone into. The available evidence cannot be subjected to scrutiny as to its credibility. However, for the purpose of deciding the bail application to a limited extent, the Court can analyse the facts, circumstances and evidence. Undisputedly, initially this accused was not named in this crime. Undisputedly, this accused was not present on the scene of occurrence, where the deceased were shot dead. The record reveals that after filing the charge-sheet, the Investigating Officer filed seven supplementary charge-sheets. The 7th supplementary charge-sheet was filed against this accused. The

motive for commission of crime is the arch rivalry between deceased Ajay Patel and this accused on account of their involvement in scrap business. It is also the case of prosecution that there was political rivalry between deceased Ajay Patel and this accused. These facts have been elaborately stated in the supplementary charge-sheet. It is seen on perusal of record that this accused has criminal antecedents. On the basis of his criminal antecedents, a submission has been made to reject his bail application. At this stage, I may mention that if the accused in a given case is entitled to get bail in the teeth of the material compiled in the charge-sheet, then on the ground of criminal antecedents, the bail cannot be denied.

07] It is pertinent to mention that in the year 2014, deceased Ajay Patel was charge-sheeted for committing murder of Deepak, who was his business partner in the scrap business. The applicant/accused had given evidence in the said case against Ajay Patel. It is undisputed that in a Crime bearing No.139/2017, registered under Section 307 read with Section 34 of the IPC, the applicant/accused and his other companions were charge-sheeted for attempt to murder of Ajay Patel. It is undisputed that the applicant

and the co-accused have been acquitted in the said case. It is the case of the applicant/accused that after the incident, in this case, accused Jay Prakash Pandey @ Pakya had surrendered before the Court and admitted his involvement in the crime as prime conspirator. It is seen that initially the investigation proceeded against Jay Prakash Pandey @ Pakya and his other associates, being the prime conspirators in the commission of crime. It is the case of the applicant/accused that the Investigating Officer was arrested in anti corruption case during the course of the investigation of this crime. It is his case that the Investigating Officer had suspected that the said case against him was filed at the instigation of the applicant/accused. It is further his case that, therefore, the Investigating Officer had grudge against him and therefore, he was falsely implicated. In order to fortify this submission, reliance is placed on the affidavit of this Investigating Officer filed in the Court of Sessions Judge, Daman in Criminal M.A. No.5/2020. In paragraph 17 of this affidavit, the Investigating Officer has stated as follows:

“17. The present applicant/accused in connivance of main conspirator of this crime namely Suresh Jagubhai Patel @ Sukha Patel hatched conspiracy to implicate the Investigation officer of this crime in false criminal case to

hamper the Investigation and to evade the lawful proceeding.”

08] It, therefore, indicates that the Investigating Officer had grudge against him. Learned SSP pointed out that the Investigating Officer has been discharged in this crime on the ground that there was no material to substantiate the allegations against him. Be that as it may, the fact remains that the Investigating Officer had doubt that this applicant/accused was behind his prosecution in anti corruption case. This is one circumstance relied upon to justify his false implication in this crime.

09] It needs to be stated that the motive for commission of crime can be made use of either way. The motive, therefore, needs to be considered in the totality of the facts and material on record, while deciding the bail application. In this context, it would be necessary to consider the material against the accused. It is seen that the prosecution is relying upon the payments made to the co-accused from the office of this applicant/accused and their family members. It is seen that the payment was made by bank transaction. In the ordinary circumstances, if such a payment was made pursuant to the

conspiracy to the co-accused, then the accused in all probability would not have made payment by bank transactions. It is the contention of the applicant/accused that he has been in scrap business and has business dealings with the accused persons involved in this crime and therefore, from time to time payments were made to them as well as to their family members. In this connection, reliance is placed on the statement of the accountant of the applicant/accused, wherein he has stated about the payments made to the co-accused and to their family members sometimes in cash as well as sometimes by bank transaction. It is pointed out that the search of the office of the applicant/accused was conducted on 21st October, 2019. Search warrant was obtained on 25th October, 2019. For next three days, search was not conducted. It was conducted on 28th October, 2019. It is pointed out that despite the order from the Magistrate, the seized documents were not produced before the Magistrate. Relying upon this circumstance, it is contended that the sole object behind this was to manipulate the documents. This is one more circumstance relied upon to justify the bail.

10] The next important aspect is with regard to the CDR of

mobile phone of the applicant/accused and the co-accused. It is pointed out by learned SSP that during the relevant period, they were in constant contact with each other. It is pointed out that it was for the purpose of hatching conspiracy to eliminate the deceased. Learned Senior Advocate Mr. Chavan pointed out that the CDR indicates that this applicant/accused was in contact with all these people for three years prior to the date of the incident as well as after the incident. Learned Senior Advocate submitted that, therefore, the CDR relied upon by the prosecution cannot be used as substantive evidence at this stage, to deny bail to the applicant/accused.

11] The next important piece of evidence, which has been relied upon by the prosecution against the accused, is the recovery of pistol at his instance after his arrest. Learned Senior Advocate submitted that this recovery is doubtful, because it was made after two years from the date of the incident and from the garage of Ketan Patel, which was searched on three occasions by the same Investigating Officer prior to this recovery. Learned Senior Advocate pointed out that the revolver, as per the case of prosecution, was lying in the drawer, which was without any lock and key. Learned

Senior Advocate pointed out that after commission of crime, the applicant/accused in the ordinary circumstances would not have kept such a weapon in the garage of Ketan Patel, who is also co-accused in this case. It is seen on perusal of record that the premises of Ketan Patel from where the revolver was recovered was searched on three occasions prior to the date of this recovery. In my view, therefore, learned Senior Advocate is right in submitting that at this stage this shaky piece of evidence may not be allowed to stand in the way of the applicant/accused. Learned Senior Advocate submitted that the prosecution would be required to prove this fact by leading cogent evidence. It is submitted that, however, on this ground bail cannot be denied to the accused.

12] It is seen that this applicant/accused was arrested on 2nd March, 2022 from Mohali, Punjab. The crime was registered on 1st April, 2018. It is undisputed that when the involvement of this accused in this crime was revealed, he was declared as proclaimed offender. It is undisputed that he was absconding. As far as this aspect is concerned, it is the contention of the accused that on account of the grudge against him by the Investigating Officer, he

feared his encounter at the hands of the Investigating Officer and therefore, he ran away. In this context, it is pertinent to mention that for almost one and half years, his involvement was not surfaced in this crime. Jay Prakash Pandey @ Pakya had taken the responsibility and therefore, the investigation was conducted. It is the case of the applicant/accused that on account of his enmity with the deceased Ajay Patel and the grudge against him by the Investigating Officer, he has been falsely implicated in this case. It is seen on perusal of record that the deceased Ajay Patel and the applicant/accused were the arch rivals in the scrap business as well as in the local politics. In my view, this fact is required to be borne in mind while appreciating the submissions made on behalf of the applicant/accused.

13] Learned SSP pointed out that while deciding the bail application of Ketan Patel, this Court (Coram : Smt. Bharati Dangre, J.) *vide* order dated 26th August, 2021 has analysed the statement of Rashid Murtuza and observed that the admissibility of this statement of Rashid Murtuza will be a matter of trial. It needs to be stated that the statement of Rashid Murtuza, who died after recording his statement, could not be said to be confessional statement. The

statement recorded by learned Chief Judicial Magistrate, Daman is at page No.1493 of the compilation. Perusal of this statement would show that the deceased Rashid Murtuza had become approver. It appears that pardon was tendered to him by learned Principal District and Sessions Judge, Daman and after tendering pardon, learned Chief Judicial Magistrate was directed to record his statement in terms of Section 306(1)(4) of the Code of Criminal Procedure, 1973. It is undisputed that Rashid Murtuza had become approver after filing of charge-sheet.

14] Be that as it may, the fact remains that this statement was recorded as per the provisions of Section 306(4) of the Cr.PC. It is undisputed that Rashid Murtuza is no more. In this context, the provisions of law dealing with the evidence of approver need brief narration. Section 114(b) of the Indian Evidence Act, 1872 provides that the Court may presume that an accomplice is unworthy of credence unless he is corroborated in material particulars. This is the rule of evidence. This is applicable, when the approver is available and his evidence is recorded. The statement of the approver recorded in terms of Section 306(4) after the death of the approver, in my

view, could not be said to be the evidence in accordance with law. It is to be noted that this observation is *prima facie* observation for the limited purpose on the basis of facts and law. It, therefore, goes without saying that the statement of Rashid Murtuza could not be said to be confessional statement. It is further seen that it was not recorded by learned Magistrate under Section 164 of the Cr.PC. Therefore, in my view, this is one more circumstance to justify the submission. It is seen that the deceased Rashid Murtuza had made an application dated 28th October, 2020 before the learned Sessions Judge, stating that he was tortured and pressurized by the Investigating Officer and Police to make the said statement. This application is the part of compilation at page No.1509.

15] It is pointed out that the trial is proceeding at snail's pace. It is pointed out that witness No.1 was examined in July, 2023 and thereafter, there has been no progress in the trial. It is pointed out that thereafter not a single witness has been examined. It is further pointed out that the prosecution is proposing to examine near about 100 witnesses. Relying upon this factual situation, it is submitted that the possibility of completion of trial in near future for years

together is very bleak. In my view, there is substance in this contention. In terms of Section 309 of the Cr.PC, once trial starts, it has to be conducted on day to day basis. The prosecution has not placed on record any reason or explanation for non-examination of the second witness after July, 2023. The accused has been in jail from the date of his arrest i.e. 2nd March, 2022. In my view, considering the material against this accused complied in the charge-sheet, I am of the view that the applicant/accused cannot be denied bail. The apprehension put-forth by learned SSP and learned advocate for the intervenor can be taken care of by imposing appropriate conditions. In the teeth of evidence and its *prima facie* analysis as above, I am of the view that the applicant/accused has made out a case to enlarge him on bail. It is made clear that the observations made in this order are *prima facie* observations for the limited purpose of deciding the bail application. Learned Judge of the Trial Court shall not get influenced in any manner by the same while deciding the case on merits. Hence, I pass following order:

ORDER

- (i) The application is **allowed**.

- (ii) Applicant/accused – Suresh Jagubhai Patel @ Sukha Patel in Crime No.39/2018, registered with Nani Daman Police Station, shall be released on bail on his furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rs. One Lakh Only) with one or two solvent sureties in the like amount.
- (iii) The applicant/accused shall not in any manner directly or indirectly tamper with the prosecution evidence.
- (iv) The applicant/accused shall not directly or indirectly threaten, pressurize or cause inducement to any witness.
- (v) The applicant/accused shall not enter the limits of Daman and Diu and Dadra and Nagar Haveli Union Territory till the completion of trial, except for the purpose of attending this trial on the given date and that too with prior intimation to Nani Daman Police Station.
- (vi) The applicant/accused shall provide the details with regard to his place of stay after release on bail including his mobile phone number to Nani Daman Police Station as well as to the Police Station within whose jurisdiction he will be staying after release on bail.

(vii) Learned Judge of the Trial Court is requested to dispose of the trial expeditiously.

16] The application is disposed of accordingly.

17] In view of the disposal of the bail application, Interim Application No.71/2023 stands disposed of.

(G. A. SANAP, J.)

LATER ON

01] Learned SSP submits that the prosecution intends to challenge this order by taking recourse to the appropriate legal remedy. He submits that the crime is serious. He submits that, therefore, operation of this order may be stayed for a period of four weeks.

02] Learned Senior Advocate for the applicant opposed this prayer contending that, on merits, this Court has found the applicant/accused entitled to get bail. He submits that the question of liberty of the accused is paramount. He submits that in the absence of stay, the right to challenge this order may not get in any

manner hampered. He further submits that this Court has put stringent conditions to take care of the interest of the prosecution.

03] I have given my thoughtful consideration to the submissions. In the bail order, after analysing the relevant material, the applicant has been found entitled to get the bail. In the bail matter, the issue of liberty of the accused is involved. In this case, in order to take care of the situation, appropriate conditions have been imposed. It is further pertinent to mention that the right to challenge this order before appropriate forum may not get in any way hampered or curtailed in case of rejection of prayer for stay. In the facts and circumstances, the prayer for stay made by learned SSP is rejected.

04] Authenticated copy of the order be provided to the learned SSP.

(G. A. SANAP, J.)