



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

**BAIL APPLICATION NO. 172 OF 2023
WITH
INTERIM APPLICATION NO. 1408 OF 2023**

SHIVSHANT SHIVRAM GAIKWAD .. APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Satyavrat Joshi i/b Mr. Aashish S. Vernekar, for the Applicant.
Mr. Anandmaya Dhorde i/b Mr. Nitin Gaware Patil, for Intervener.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 13, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 302, 120B read with 34 of the Indian Penal Code, 1860, under sections 3, 25 of the Arms Act and under sections 3, 7 of the Criminal Law Amendment Act registered vide C.R. No. 1576 of 2021 with Chakan Police Station, Pune. The incident is dated 23/12/2021. The FIR is dated 24/12/2021. The applicant is

arrested on 24/12/2021. The applicant is accused no.5.

3. My attention is invited to the order dated 22/08/2022 passed by the trial Court in respect of accused no. 6 who has been enlarged on bail. The facts are stated in the said order in paragraphs 3 and 4 which read thus:

“3. As per the case of prosecution, on 23.12.2021 in the evening hour at about 7.00 p.m. when informant Girish Karale was standing with friends at Shelpimpalgaon Chawk, deceased Nagesh Karale arrived there in a car bearing registration No.MH-14-JJ-1323 and offered the informant to come for dinner with him, to which he denied. Therefore, the deceased went away. Thereafter, at very same day around 9.00 p.m. Sangeeta Thakur, the owner of Milind Beer Shopee made a phone call to the informant and told that, in front of her beer Shopee some unknown person fires a shot on the deceased. Soon after, the informant rushed to the spot where deceased was lying in pool of blood. Immediately, the deceased was referred to Jaihind Hospital, where the doctor declared him dead. Thereafter, the informant went to Beer Shopee and saw CCTV footage where found accused Yogesh Daundkar and three unknown persons fires a shot on the deceased by pistol.

4. It is further alleged that, in the General Assembly Election-2019, one audio clip regarding conversation between accused Yogesh Daundkar and one Rajendra Mohite was made viral. On account of said audio clip, on 21.10.2019, the deceased abused Rajendra Mohite, Dilip Mohite and Sanjay Mohite. The informant was having suspicion and therefore, lodged the report of incident. On the basis of First Information Report, the crime was registered and arrested the accused, including applicant on the suspicion that he hatched criminal conspiracy with accused Yogesh to commit a murder of the deceased.

4. So far as the present applicant is concerned, learned APP and learned counsel for the complainant submitted that there are CDRs on record to show that the applicant was in touch with the main

assailant ie. accused Yogesh and there was conversation that the work has been done.

5. It is necessary to reproduce paragraphs 8 and 9 of the order dated 22/08/2022 passed by the trial Court in respect of co-accused Sopan who has been released on bail which read thus :

“8. In the light of submission, I have gone through the case record with the material placed before the court. Parties have placed reliance on certain authorities with documents. As far as the role of the applicant in the crime as alleged by the prosecution is restricted to the extent of hatching criminal conspiracy to commit a murder of the deceased which is provided under section 120-B of the Indian Penal Code. Except the same, there is no allegation against the applicant about his actual involvement to commit a murder of the deceased. In the light of above said fact the prosecution relied on the transcription between the applicant and co-accused Yogesh Daundkar alleged to be taken place on number of occasions before, during and after the incident in question. Admittedly, the report of voice sample of the accused persons as alleged is not yet received from the Forensic Department, New Delhi. The Forensic report regarding audio recording and specimen voice recording of the applicant and others issued by RSFL Ganesh Khind, Pune dated 15.05.2022 is placed on record. As per the investigating agency the alleged audio recording Ex.2 of the applicant is marked "B" and specimen of voice recording Ex.5 is marked "E". As per the RSFL report on spectrographic analysis of mark "B" and "E" i.e. Ex.2 and 5, the questioned voice Exhibit of speaker mark as Ex.1 is similar is the specimen voice Exhibit of speaker mark at "C" to Sopan Daundkar. Factually, Ex.1 and 3 relates to accused Nilesh Daundkar and not applicant Sopan Daundkar. Therefore, at this stage, this report is not sufficient to attribute the role of the applicant to deny his right to get release on bail. At the same time, no call details record (CDR) is on record.

9. If we perused the transcription placed on record, it appears 16-audio recording between the applicant and co-accused Yogesh Daundkar as alleged. On perusal of the first recording, it transpires conversation about beating of Krishna at the hands of police as complaint of Natha Karale is there. In the second, third, fifth,

seventh, eighth, ninth, tenth, twelfth, thirteenth, fourteenth and sixteenth, recording nothing appear about hatching of criminal conspiracy as alleged. In the fourth recording Yogesh is talking about the person against whom one Kavita has lodged complaint. However, does not attribute role of the applicant to instigate or to do any act by accused Yogesh. In the sixth recording nothing revealed about the role of the applicant, regarding commission of crime. In the eleventh recording Yogesh said 'work finished' but no response appears on the part of the applicant as alleged except 'ha'. In the fifteenth recording it only averred that Sopan said to Yogesh, not to make call as his mobile number will locate. On the above said facts the prosecution strongly opposed the application.”

6. The role of the present applicant is similar and in any case it is not more than that of Sopan. On this ground even the present applicant can be enlarged on bail. It is however, pointed out by learned counsel for the complainant that the order dated 22/08/2022 passed by the trial Court granting bail to co-accused Sopan is under challenge in this Court and the same is pending.

7. In my view, since co-accused having similar role is enlarged on bail, there is no reason why the applicant should not be enlarged on bail on parity. However, in the event, the orders are passed in respect of cancellation of bail of Sopan, liberty is kept open to the applicant to apply as I am allowing this application only on the ground that the trial Court has enlarged the co-accused-Sopan on bail. No criminal antecedents are reported against the applicant. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Shivshant Shivram Gaikwad in connection with C.R. No. 1576 of 2021 registered with Chakan Police Station, Pune shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the investigating officer of the concerned police station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall stay out of Pune district.

(g) Except for the purpose of reporting to the investigating officer and attending the trial, the applicant shall not enter Pune district till further orders of the trial Court.

8. The application is disposed of.

9. In view of disposal of the bail application, interim application also stands disposed of.

(M. S. KARNIK, J.)