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

BAIL APPLICATION NO.1283 of 2021

Rohit Dattatraya Shende ... Applicant
V/s.
The State of Maharashtra ... Respondent

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**WITH
BAIL APPLICATION NO.2442 OF 2021**

Ghanshyam Popat Darade ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Ashok Mundargi, Senior Advocate, with Mr. Kuldeep U. Nikam with Mr. Prasad Avhad with Mr. Surajsingh S. Malas for the applicant in BA/1283/2021.

Mr. Harshad Nimbalkar with Mr. Satyam Nimbalkar i/by Mr. Onkar Chitale for the applicant in BA/2442/2021.

Ms. A. S. Pail, PP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 18, 2023

PC.:

1. These are the applications filed by the accused No.3 and accused No.4 under section 439 of the Criminal Procedure Code, 1973, in connection with C.R. No.434 of 2020, dated 5th October 2020, registered with Shivajinagar Police Station, Pune City, for offences punishable under sections 302, 364, 365, 201, 120(B) of

the Indian Penal Code, 1860 seeking their release on bail.

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

The informant-Prashant Chandrashekhar More is the brother of the deceased Umesh Chandrashekhar More. Initially, on 2nd October 2020, a missing complaint bearing No.16 of 2020 was filed stating that on 1st October 2020, he received a call from the wife of the deceased informing the informant that the deceased had not returned home on the said day from the court and his mobile number was also turned switched off.

Subsequently, on 5th October 2020, the Police registered the present FIR under the provision of section 365 of the IPC against an unknown person. It is stated in the complaint that the deceased, Umesh Chandrashekhar More has been a resident of Dhankawadi, Pune, for the last four years. On 1st October 2020 at 9:30 p.m., the informant received a call from the wife of the deceased Umesh Chandrashekhar More, who informed him that on the said day at 11:00 a.m., the deceased Umesh Chandrashekhar More had left home for court and he had not returned home till 09:30 p.m. The deceased's wife further informed the informant that the deceased Umesh Chandrashekhar More, on the said day in the afternoon, had met Advocate B. N. Jagtap and, thereafter, at around 03:00 p.m. One Ajay Kunthe had called the deceased Umesh Chandrashekhar More when the deceased had informed him that he was at his Senior's Office and would return in 15 minutes. However, he did not return, and his phone was switched off.

The informant, thereafter, came to Pune and took a search for his brother Umesh Chandrashekhar More. However, I could not get information on his whereabouts and, therefore, on 2nd October 2020, a missing complaint bearing No.16 of 2020 was registered with Shivajinagar Police Station. Till the date of filing of the FIR dated 5th October 2020, the deceased Umesh Chandrashekhar More was not found, or no information could be gathered in respect of the same and, therefore, the informant and his family alleged that some unknown person had abducted his brother/deceased Umesh Chandrashekhar More. Accordingly, FIR was lodged against an unknown person for his abduction.

3. The applicant in Criminal Bail Application No.1283 of 2021 is accused No.3, and the applicant in Criminal Bail Application No.2442 of 2021 is accused No.4. Broadly, according to the prosecution, accused Nos.1 and 2 are the assailants and accused Nos.3 and 4 are the conspirators of the murder of the deceased.

4. Learned Sessions Judge rejected the applicants' application by order dated 20th February 2021. The applicants have, therefore, filed present bail applications under section 439 of the Criminal Procedure Code, 1973.

5. Learned Senior Advocate for accused No.3 and learned advocate for accused No.4 submitted that the applicants are falsely implicated. The entire case of the prosecution is based on circumstantial evidence. There is no material to implicate the applicants in the crime. There is no recovery or discovery at the instance of the applicants. The filing of an anti-corruption case by

the deceased against accused No.3 cannot be termed as a motive as accused No.3 was already released on bail, and the material on record indicates that the said dispute was amicably settled by the deceased and accused No.3. The transcript placed on record does not indicate complicity of the accused Nos.3 and 4. CCTV footage shows that the deceased was travelling on a two-wheeler; however, according to the prosecution, he was abducted in Swift Car. Learned Senior Advocate submitted that other persons might be involved in the murder of the deceased as the deceased had strained relations with many other persons. Relation of the deceased with several other persons was strained, which may be a motive for others to commit the murder of the deceased. According to the learned advocate for accused No.4, he has neither been named by any witness nor is there any material against accused No.4 to implicate him in the alleged offences. According to him, he was working with accused No.3. Therefore, he has been falsely implicated. The applicants, therefore, deserve to be released on bail.

6. Per contra, learned APP submitted that the material on record indicates a strong motive for filing the case under the provisions of the Prevention of Corruption Act on a complaint filed by the deceased. The attempt of accused No.3 to settle the case was unsuccessful, and therefore, accused Nos.3 and 4 conspired to commit murder of the deceased by contracting accused Nos.1 and 2 to abduct and kill the deceased. The material on record in the form of a transcript indicates the transfer of messages between accused Nos.1 and 2 and accused Nos.3 and 4 discussing the

location, residence, and place of work of the deceased. It is sufficient to indicate that the applicants, along with accused Nos.1 and 2, committed the planned murder of the deceased. Extra-judicial confession of accused Nos.1 and 2 supports the prosecution case. She, therefore, prayed for the rejection of the bail applications of the applicants.

7. Before considering the material on record, it is necessary to delve into the parameters of section 439 of Cr.P.C. in the context of offences under Section 120B of the Indian Penal Code. The Apex Court, in the case of **State of Maharashtra vs. Ritesh S/o Vasudeo Wanjari** reported in (2001) 4 SCC 224, has observed in paragraphs 5 and 6 as under:

“5. For releasing the respondent on bail, the High Court has ventured to refer to the merits of the case and prematurely held that there was no material on record to show that the respondent was guilty of conspiracy, in the execution of which, Shubhangi, once his beloved, was murdered. Despite observing that the case was based on circumstantial evidence, the High Court did not afford the prosecution an opportunity to lead evidence for establishing the existence of conspiracy and wrongly held that it was difficult to infer the existence of a conspiracy, particularly when the respondent had gone to Baramati. The factum of the respondent going to Baramati was relied upon by the prosecution as one of the circumstances connecting the accused with the commission of the crime, particularly when it was alleged that while at Baramati, he used to have telephonic talks with the other accused persons about the alleged conspiracy. In the absence of "exact talks", the High Court found that the allegation of conspiracy was not established. The Single Judge of the High Court was not justified, at the initial stage, to observe:

"...it is difficult to say that after the conspiracy was hatched the applicant had been to Baramati and from there he used to have talks with other accused on phone regarding the alleged conspiracy."

6. Once the final charge sheet has been filed in the trial court, the High Court, under normal circumstances, should have permitted the respondent to get a verdict of his innocence or involvement from that court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out, in the instant case, to depart from such usual established procedure. The order impugned being contrary to law is liable to be set aside.

8. On consideration of the charge sheet, affidavit-in-reply and other material placed on record, it prima facie appears that prosecution under section 7 of the Prevention of Corruption Act was lodged against accused No.3 as he was allegedly caught red-handed while accepting amount bribe. Accused No.3 was, thereafter, arrested and released on bail. The material on record prima facie indicates that in September 2020, the deceased had expressed apprehension to his brother that there was a threat to his life from accused No.3 and other persons. Prima facie, the transcript of the telephonic conversation between accused No.1, accused No.4 and accused No.2 indicates that accused Nos.1 and 2 kept watch upon the deceased as per the direction of accused No.3. It prima facie appears that the accused No.3 had given the registration number of the motorcycle of the deceased to accused Nos.1 and 2. Accused No.3 had also given information about the timing of visits of the deceased to Shivajinagar Court. Accused No.4 provided information to Accused Nos.1 and 2 regarding the whereabouts of the deceased, including the address of the

deceased's residents and court timings. The transcript prima facie reveals that the accused Nos.1 and 2, kept watch on the deceased from 26th September 2020 till the date of the kidnapping of the deceased. The DNA report prima facie shows the identity of the deceased. The cumulative effect of material on record indicates that accused No.3 had the motive to commit the murder of the deceased, and accused No.4 assisted accused Nos.1 and 2 in keeping watch on the deceased and about his whereabouts. The material on record prima facie indicates the existence of a conspiracy by accused Nos.3 and 4 to commit the murder of the deceased.

9. It is well settled that such criminal conspiracy and agreement can be proved either by direct evidence or circumstantial evidence, or both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Based on the material on record, prima facie ingredients of the offence of conspiracy that there should be an agreement between the persons to conspire and the agreement for doing an illegal act are prima facie fulfilled. Therefore, in my opinion, the applicants have failed to make out a prima facie case for exercising discretion under section 439 of the Criminal Procedure Code, 1973.

10. The bail applications are, therefore, rejected.

11. The trial Court is directed to expedite the trial.

(AMIT BORKAR, J.)