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

BAIL APPLICATION NO.765 OF 2023

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Deepali Rahul Bhilare

... Applicant

V/s.

State of Maharashtra

... Respondent

WITH

BAIL APPLICATION NO.3309 OF 2022

Rashid Nazir Inamdar

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Aniket Vagal with Mr. Kunal Pednekar for the applicant in BA/765/2023.

Ms. Sana Raees Khan with Mr. Aniket Pardesi and Mr. Aditya Parmar for the applicant in BA/3309/2022.

Mrs. A.S. Pai, P.P. with Mr. P. H. Gaikwad, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 11, 2023

P.C.:

1. These are the applications under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.487 of 2020 registered with Lonavala Police Station for the offences punishable under Sections 302, 120-B and 34 of the Indian Penal Code, 1860 and under Sections 3(25), 4(25) and 27 of the Arms Act, 1959.

2. According to prosecution, informant Soumya is the wife of deceased Rahul Shetty. The murder of deceased took place on 26th October 2020 at about 9.30 p.m. near his house at Jaichand Chowk, Lonavala, Taluka Maval, District Pune. It is alleged that accused No.7/Ibrahim Yusuf Khan gave blows of axe on his neck and also fire bullets by firearm pistol on his face and committed his murder. Then, he left place of incident by motor cycle driven by accused No.6/Mohan Alias Thapa Dev Bahaddur Malla. The report was lodged on the same day. She alleged that several accused conspired to kill her husband due to previous enmity. She also stated the alleged motive for accused to commit murder of her husband. She alleged that the present accused had made attempt to commit murder of the deceased previously (Crime No.79 of 2012 is registered for offence under Section 307 IPC against him and Sessions Case is pending).

3. The prosecution alleged that contract to kill the deceased was given to one Sagar Rathod, but he denied and informed same to the deceased. Hence, present accused convinced accused No.7/Ibrahim to do said job. One day before the incident, Crime No.482 of 2020 is registered at Lonavala Police Station against other accused, namely, Suraj Agrawal, Mubin and Kadar for possessing country made pistols and cartridges. Deceased had given complaint on 22nd October 2020 that there is danger to his life from accused. On that date, several accused with present accused Rashid conspired to commit murder of deceased in a flat and said flat is shown by accused Mubin, after his arrest. Accused gave responsibility to accused No.6 Mohan to eliminate the

deceased. Thus, Mohan brought accused No.7/Ibrahim and resided with him in a rented bungalow at Lonavala. Said Mohan demanded weapons through accused No.9/Mohsin from the house of Mubin to be handed over to accused/Ibrahim. On 25th October 2020, said Mohsin made phone call to present accused to confirm whether the weapons is to be handed over to accused Mohan, and on the direction of present accused, he acted further. But he used word 'biscuit' instead of weapon and recording of said call is found in the mobile of present accused. Then accused Mohsin took weapons from the house of accused Mubin and transported them in a tempo bearing registration No.MH-14/GU-7158 and gave them to accused No.6/Mohan and then Mohan kept those weapons in a bungalow where he was residing.

4. It is further alleged that on 26th October 2020, accused/Mohan and accused/Ibrahim went to the place of incident on a motorcycle, took tea, cigarette from shops and after the deceased came committed his murder.

5. The applicant in BA/765/2023 was arrested on 26th October 2020 and the applicant in BA/3309/2022 was arrested on 26th November 2020. After completion of investigation, charge-sheet is filed against accused persons.

6. Learned sessions Judge by order dated 13 July 2022 rejected the applications filed by the applicants under section 439 of the Criminal Procedure Code, 1973. The applicants, therefore, filed present bail applications.

7. I have heard learned counsel for the applicants and learned

PP for the State at some length. With the assistance of learned advocate, I have perused report under section 173 of the Criminal Procedure Code and documents annexed with it as well as material placed on record.

8. At the outset, learned advocate for the applicants placed reliance upon order dated 10th May 2023 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.4793 of 2023 (**Kadar Nazir Inamdar vs. The State of Maharashtra**), whereby the co-accused Kadar Nazir Inamdar was released on bail. Special emphasis was laid on the observations in paragraph Nos.3 and 7 of the said order wherein the Apex Court considered the submission of respondent/State that the co-accused Kadar was a part of conspiracy hatched to eliminate the deceased.

9. In opposition to this, learned PP would urge that the role attributed and circumstances of the case against the applicants are different and, therefore, the applicants do not deserve to be released on bail.

10. To begin with, it may be necessary to extract the observations of the Hon'ble Supreme Court in the case of Co-accused Kadar Nazir Inamdar as the accusation against the applicants rest on same substratum. Paragraph Nos.3 and 7 read as under:

“3. Learned counsel for the respondent/State vehemently opposes the petition. He submits that the petitioner is a part of conspiracy hatched to eliminate the deceased. He submits that the circumstances, as discussed by the learned Single Judge of the High Court, clearly point out the finger towards the present petitioner.

7. Upon perusal of the charge-sheet as well as the impugned order it cannot be said that the role of the petitioner herein stands on a higher pedestal than that of co-accused/Mohsin. It is further to be noted that though the petitioner has been incarcerated for about two and a half years, the charges are yet to be framed.”

11. The applicant in Bail Application No.3309 of 2022 is accused No.8, whereas the applicant in Bail Application No.765 of 2023 is accused No.2. Co-accused Kadar Nazir Inamdar is accused No.4.

12. On perusal of the material against Kadar Nazir Inamdar, it needs to be noted that Kadar (accused No.4) is named in the first information report. He is also named in earlier F.I.R. under the Arms Act, 1959 dated 23rd October 2020. According to the prosecution, Kadar Nazir Inamdar had allegedly purchased arms and gave it to accused No.1-Suraj Agrawal. There are calls between accused No.7 and Kadar Nazir Inamdar which is based on CDR. In the disclosure memorandum dated 3rd August 2021, accused No.5 allegedly stated that he provided training of use of firearm to Kadar Nazir Inamdar. Statements of wife, sister and brother-in-law of the deceased and Rubina Nisar Shaikh resident of deceased's building alleged prior threat from Kadar Inamdar. Overall role attributed to the Kadar Inamdar was that he was part of conspiracy to commit murder of the deceased along with other co-accused.

13. Role attributed to accused No.8-Rashid Nazir Inamdar is also of being part of conspiracy to commit murder of deceased as the deceased had illicit relationship with first wife of Rashid. He is neither named in the first information report nor the material as

disclosed in para 12 is available against the accused No.8.

14. Accused No.2-Deepali Rahul Bhilare is also attributed role of being part of conspiracy to commit murder of the deceased as the deceased had love relationship with her but subsequently deceased refused to perform marriage with her. Except being named in the statements of wife, sister and brother-in-law of the deceased and Rubina Nisar Shaikh, the material available against the accused No.4 is absent in case of accused No.2. Overall role attributed to accused No.2 is similar to that of Kadar Nazir Inamdar as accused No.2 being part of conspiracy to commit murder of the deceased.

15. The Hon'ble Supreme Court in order dated 10th May 2023 has observed that the role of Kadar Inamdar cannot be said to be on higher pedestal than that of co-accused-Mohsin and Kadar Inamdar had been incarcerated for about two and a half years, and the charges are yet to be framed. The case against Kadar Inamdar was that he was part of conspiracy hatched to eliminate the deceased.

16. Considering the role attributed to the applicants, in my opinion, the observations in paragraph Nos.3 and 7 of the Hon'ble Supreme Court governs the case of the applicants with equal force.

17. For the foregoing reasons, I am unable to persuade myself to agree with the submission on behalf of the prosecution that the applicants are not entitled to claim parity.

18. I am, therefore, inclined to exercise the discretion in favour of the applicants. Hence, following order:

- a) The applicants Deepali Rahul Bhilare and Rashid Nazir Inamdar be released on bail in relation to C.R. No.487 of 2020 registered with Lonavala Police Station for the offences punishable under Sections 302, 120-B and 34 of the Indian Penal Code, 1860 and under Sections 3(25), 4(25) and 27 of the Arms Act, 1959 on furnishing PR. Bond in the sum of Rs.25,000/- each along with one or two sureties in the like amount;
- b) The applicants shall mark their presence before the concerned police station on first Saturday of every month between 11.00 a.m. to 2.00 p.m.;
- c) The applicants shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;
- d) The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;
- e) The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected by the police;
- f) The applicants shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer and the court concerned, and shall not change the residence till the final disposal of the case without permission of trial Court.

19. By way of abundant precaution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the co-accused.

20. Both the bail applications stands disposed of in above terms.

21. At the time when the order was pronounced, learned PP was not present in the Court. Immediately thereafter she mentioned the matter. I, therefore, requested her to give notice to other side. Accordingly, she has given notice to the learned advocates for the applicants.

22. Considering the facts of the case and release of accused on bail based on principle of parity, in my opinion, end of justice would be met if trial Court is directed to decide the trial within six months. I, therefore, direct learned Sessions Judge to decide the trial as expeditiously as possible and in any case within six months from today.

(AMIT BORKAR, J.)