



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.365 OF 2024**

Sagar Pradip Yerunkar
versus
State of Maharashtra

... Applicant
... Respondent

Mr. M.A.Khan with Mr. Tajammat Khan, Mr. Dilip Parmar i/by Capri Legal for Applicant.

Mr. S.R.Aagarkar, APP for State.

Mr. Ghadigaonkar, PI, Kurla Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 25 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant who is arraigned in C.R.No.6 of 2023 registered with Kurla Police Station for the offences punishable under Sections 120B, 307, 212 of the Indian Penal Code and Sections 3 read with Section 25 and Section 27 of the Arms Act, 1959 has preferred this application to enlarge him on bail.

3. The first informant is a contractor. He executes the construction works of BMC, MHADA and Police Housing Corporation etc. MHADA had floated a tender for execution of the work of footpath and nullas in between Bandra to Dahisar. The first informant had submitted a bid. The first informant alleged, Mr. Kaushalendra Sharma and Shekhar Pandey were the rival contractors. They had employed co-accused Ganesh Chukkal and Samir Sawant to exert pressure on the

other bidders to withdraw their bids. The first informant alleged that co-accused Samir Sawant and Ganesh Chukkal had made a call to the first informant's cousin Virendra Singh and also threatened the first informant with dire consequences if the bid was not withdrawn.

4. On 9 January 2023, while the first informant and his friend Pankaj, were passing from, in front of Kapadia Nagar, towards Kurla, Mumbai, a person fired on their car with intent to shoot the first informant. Pankaj alerted the first informant. Thereupon, the first informant, was at the wheel of the car. At that time, co-accused Karan tried to stop the car by banging on the bonnet of the car. The first informant alleged, before the applicant could fire the second bullet, they sped away.

5. The applicant came to be apprehended on 13 January 2023. The learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant. Hence, this application.

6. Statement of the first informant came to be recorded under Section 164 of the Code, 1973. The applicant and the co-accused were identified in the test identification parade.

7. Learned Counsel for the Applicant submitted that the first informant and his friend Pankaj had not known the applicant from before. FIR was lodged against an unknown shooter. Two circumstances were pressed into service, namely, test identification parade and the recovery of the pistol pursuant to the discovery made

by the applicant, do not incriminate the applicant. Since the applicant is in custody for more than a year, the applicant deserves the exercise of discretion. In any event, since the bullet was fired at the lower left side of the door of the car, the intent was not to kill the first informant. At the most, the intent was to instill fear in the mind of the first informant.

8. Learned APP resisted the prayer for bail. It was submitted that the applicant was specifically named in the Section 164 statement recorded before the learned Magistrate as the person who had fired at the first informant. As it was a case of contract shooting, the applicant does not deserve to be released on bail.

9. I have perused the report under Section 173 of the Code and the documents annexed with it. There is material to substantiate the allegations that there was a shooting at the first informant and the bullet hit the left door of the car. Pursuant to the disclosure statement made by the applicant, the pistol came to be recovered. The discovery was sought to be assailed on the ground that it was from a place open and accessible to all. The aforesaid submission cannot be countenanced at this stage. The recovery of the weapon pursuant to the discovery made by the applicant, prima facie, incriminates the applicant.

10. The applicant was allegedly identified in the test identification parade held on 9 March 2023. Learned Counsel for the Applicant submitted that there was inordinate delay in holding such parade. Moreover, the photographs of the applicant

were flashed on 30 January 2023 itself and, thus, no credence can be given to test identification parade. The aspect of delay in holding test identification parade and the effect thereof, on the veracity of the identification can only be legitimately considered at the stage of trial. There is material to indicate that on 23 January 2023 itself, when the statement of the first informant was recorded before the learned Magistrate, the applicant was identified as the person who had fired at the first informant.

11. Prima facie, at this stage, there is material to establish the nexus between the applicant and the alleged incident of firing. The Court cannot lose sight of the fact that there is material to indicate that the applicant was allegedly hired to fire at the first informant, as the first informant refused to allegedly withdraw from the tender process. The material on record, thus, indicates that the applicant was hired to fire at the first informant in pursuance of a conspiracy, as a contract shooter.

12. In the backdrop of the aforesaid nature of the accusation and the material on record, which makes out a strong prima facie case against the applicant, this is not a fit case to exercise the discretion in favour of the applicant.

13. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail

and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)