



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1850 OF 2023**

Rajendra Amarsingh Aherwal

... Applicant

versus

State of Maharashtra

... Respondent

Mr. Rajendra Rathod with Mr. Sohail Ahmed, Ms. Sameea Shaikh for Applicant.
Mr. M.G.Patil, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 6 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.232 of 2018 registered with Dadar Police Station for the offences punishable under Sections 120B, 302, 201 of the Indian Penal Code, Sections 3 read with Section 25 of the Arms Act, 1959 and Section 37(1) and 135 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.
3. Manojkumar – deceased, was the brother of Sanjaykumar Maurya – first informant. He was engaged in the business of repairs of electrical weighing scales. He used to come to Dadar Vegetable market at about 5.00 a.m. daily to engage in the said work. On 12 October 2018 at about 7.15 a.m., the first informant was plying his taxi on his way to Dadar He found that a crowd had gathered at Mhatre Pen Company. When he reached the said spot, he noticed that the deceased was lying in an injured state. It

transpired that the deceased was shot at. The deceased was shifted to KEM Hospital. However, he was declared dead.

4. The prosecution alleges that Radhakrishna – accused No.1 was in relationship outside marriage with the wife of the deceased. In pursuance of a conspiracy to eliminate the deceased, accused No.1 Radhakrishna had given a contract to kill the deceased to the applicant Rajendra. The applicant and his associate – Hemendra came to Mumbai. Accused No.1 Radhakrishna had provided funds to procure a country made revolver. The applicant had procured a revolver from Purshottam – Accused No.4.

5. On 12 October 2018, while the deceased was on his way to Dadar vegetable market, co-accused Hemendra had shot the deceased. The applicant was allegedly present in the vicinity of the spot where the deceased was fired at.

6. The applicant and the co-accused came to be arrested. Co-accused Hemendra made a disclosure statement leading to the recovery of weapon of offence. Test identification parade was conducted wherein the applicant was allegedly identified by the witness namely Dhananjay.

7. Learned Counsel for the Applicant submitted that the applicant is in custody since more than five years and three months. The trial has not yet commenced. Even on merits, there is no material to connect the applicant with the alleged offences. Dhananjay Thorve claimed to have seen the assailant Hemendra

waving a person at the time of the alleged occurrence and the prosecution alleges that the said person was the applicant. However, Vaibhav Patil who had identified the assailant Hemendra has not claimed that he had seen any person at the time of the alleged occurrence. It was submitted that test identification parade is also fraught with infirmity as the Magistrate had pointed out the accused to the witness.

8. Learned APP resisted the application for bail. It was submitted that the witness Dhananjay Thorve clearly identified the applicant as the person who was present at the time of the alleged occurrence. Moreover, there is material to indicate that the applicant was in touch with the principal accused – Radhakrishna and other accused. There were financial transactions between the applicant and the accused No.1 Radhakrishna. Thus, there is overwhelming material to indicate that the applicant was the privy to the conspiracy to eliminate the deceased.

9. I have perused the report under Section 173 of the Code and the documents on record. So far as the disclosure statement made by Hemendra, the alleged assailant, the memorandum of disclosure statement does not indicate that reference to the applicant distinctly relates to the discovery thereby made by the co-accused Hemendra. The prosecution professes to rely upon the statement of Dhananjay Thorve to rope in the applicant. He claimed that he had seen the assailant waving to a person after firing at the deceased. The said statement of Thorve seems to have been recorded after the applicant came to be arrested. Other circumstances of

the conversation between the applicant and the accused No.1 and the financial transactions, prima facie, do not appear to be of such nature as to bear weight of the accusation of criminal conspiracy. The details of the financial transactions indicate that on 1 May 2018, a sum of Rs.6,000/- was credited to the account of the applicant and on 12 October 2018, on the date of the alleged occurrence, a sum of Rs.1,000/- was credited to the account of the applicant.

10. In the aforesaid view of the matter and having regard to the nature of the circumstances pressed into service against the applicant, in my view, a prima facie case is made out to exercise the discretion in favour of the applicant. Moreover, the applicant is in custody for five years and three months. The prosecution proposes to examine 53 witnesses and it is unlikely that the trial can be concluded within a reasonable period. I am, thus, inclined to release the accused on bail.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Rajendra Amarsingh Aherwal be released on bail in C.R.No.232 OF 2018 registered with Dadar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence DCB – CID, on first Monday of

every month between 11 am to 1 pm till the conclusion of the trial.

(iv) The applicant shall not tamper with the prosecution evidence. 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.

(v) 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.)