

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

BAIL APPLICATION NO. 3230 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Prathmesh @ Yash Vinayak Chitte ...Applicant

Versus

State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 4427 OF 2023

Suresh Namdev Renuse ...Applicant

In the matter between

Prathmesh @ Yash Vinayak Chitte ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Kuldeep Nikam, for the Applicant in BA/3230/2023.

Ms. Ranjana Humane, APP for the State/Respondent.

Mr. Ashish Vernekar, for the Applicant in IA/4427/2023.

CORAM: N. J. JAMADAR, J.

DATED: 25th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant – accused No.5, who is arraigned in CR No.24 of 2021 registered with Velha Police Station, Pune Rural, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code, 1860”), Section 3 read with Section 25 and Section 4 read with Section 27 of the Arms Act, 1959 and Section 3(1), 3(2) and 3(3) of the Maharashtra Prevention and Eradication of Human

Sacrifice, other Inhuman and Aghori Practices and Black Magic Act, 2013, has preferred this application to enlarge him on bail.

3. The gravamen of indictment against the applicant and the co-accused runs as under:

(a) Suresh Renuse, the first informant, is brother of Navnath alias Pappu Renuse (the deceased). On 4th March, 2023, the first informant was informed by his cousin Ashok alias Lala that the deceased was killed by Laxman Renuse (A1) and his four associates in front of Visawa Hotel, Velhe, the native place of the first informant, deceased and accused No.1. The first informant reached Visawa Hotel and found that the deceased was lying in a pool of blood. There were multiple injuries on the person of the deceased with sharp edged weapons. A blood stained knife and cleaver (*sattur*) were lying threat. Four to five empty cartridges were strewn.

(b) The alleged eye witnesses to the occurrence narrated that accused No.1 took the deceased into Hotel Visawa. Unknown associates of accused No.1 followed them. Two of the unknown associates of accused No.1 were armed with pistols. They shot at the deceased. Two other unknown associates of accused No.1 as well as accused No.1 unleashed blows by means of sharp weapons which they were carrying, after

the deceased fell down. Thereafter, accused No.1 and his associates fled away on two motorcycles. The applicant is alleged to be one of the four associates of accused No.1, and the applicant allegedly assaulted the deceased by means of cleaver (*sattur*) and fled away alongwith co-accused on his Avenger motorcycle.

(c) The first informant alleged that accused No.1 had a grudge against the deceased as accused No.1 suspected that the deceased was taking side of the party with whom accused No.1 had a dispute over the land situated at Maral Awad. In the supplementary statement, the first informant further alleged that Vishal Renuse, the son of accused No.1, had passed away due to jaundice. However, accused No.1 suspected that the deceased and his cousin Ashok alias Lala had practiced black magic and, thus, accused No.1 had proclaimed that he would eliminate the deceased and Ashok @ Lala. The prosecution alleges in pursuance of a criminal conspiracy, of which the applicant was also a confederate, firearms and weapons were procured and the deceased was killed.

4. Mr. Nikam, the learned Counsel for the applicant, submitted that the role attributed to the applicant is that of being one of the unknown associates of accused No.1. The

applicant had allegedly assaulted the deceased by means of cleaver (*sattur*). However, till the filing of the charge-sheet, there was no material to establish the identity of the applicant as one of the assailants. After filing of the charge-sheet, belatedly on 22nd May, 2023, the Test Identification Parade was held in which eye witnesses allegedly identified the applicant as one of the assailants. Thereafter, the statements of those witnesses came to be recorded under Section 164 of the Code of Criminal Procedure, 1973. The inordinate and unexplained delay in holding the TI Parade, which is the only material to connect the applicant with the alleged offences, dents the prosecution. Nothing has been recovered at the instance of the applicant. Therefore, the applicant deserves to be enlarged on bail.

5. To bolster up the submission that unexplained delay in holding the TI Parade impairs the prosecution, Mr. Nikam placed reliance on a decision of the Supreme Court in the case of *Hari Nath and another vs. State of U.P.*¹.

6. As against this, Ms. Humane, the learned APP, stoutly opposed the prayer for bail. It was submitted that in pursuance of a criminal conspiracy the deceased was killed in a brutal manner. Inviting the attention of the Court to the injuries

1 (1988) 1 Supreme Court Cases 14.

noted by the autopsy surgeon in the PM Report, it was submitted that the intent to kill is evident as even after the deceased fell down due to gun shot injuries, the accused unleashed numerous blows by means of sharp edged weapons. Ms. Humane, further submitted that there is material in the form of transcript of the audio recording which indicates that a conspiracy was hatched to kill the deceased as accused No.1 was of the view that his son Vishal was killed by the deceased by practicing black magic. Reliance was also placed on the discoveries leading to the recovery of the weapons of offence and the statements of the eye witnesses to bolster up the submission that there is an overwhelming evidence against the applicant.

7. Mr. Vernekar, the learned Counsel for the respondent – intervener – first informant, supplemented submissions of the learned APP. It was submitted that the material on record makes out a clear case of criminal conspiracy to kill the deceased. Since the applicant was privy to conspiracy and played an active role of assaulting the deceased, the applicant does not deserve to be enlarged on bail.

8. The PM Report indicates that deceased died due to multiple firearm injuries with multiple chop injuries. The

Autopsy Surgeon noted that there were numerous chop and incised wounds on the person of the deceased. In addition, there were five firearm wounds of entry. There is overwhelming material to indicate that the deceased met a homicidal death.

9. On the aspect of authorship of the homicidal death, there are statements of witnesses which show that on 6th March, 2023 accused No.1 took the deceased to Hotel Visawa to have tea. The witnesses have also stated that there were four associates of accused No.1, two of them were brandishing pistol. Rest two were assaulting the deceased by means of chopper.

10. The thrust of the submission of Mr. Nikam was that the identity of the applicant, as one of the four associates of accused No.1, is sought to be established on the basis of TI Parade which was held on 22nd May, 2023 well over two months of the arrest of the applicant i.e. 8th March, 2023. Therefore, evidence of TI Parade loses credence.

11. In the case of ***Hari Nath*** (supra) on which reliance was placed by Mr. Nikam. In the context of delay in the conduct of the TI Parade, the Supreme Court enunciated that, in the facts of the said case, there was serious lapse on the part of the prosecution in putting up the suspected culprits for a test identification after a lapse of four months after their arrest.

There was no explanation at all for the delay. The benefit of such regrettable and wholly unexplained lack of promptitude in holding the test identification, enures to the appellants – accused. The evidence of test identification lacked the requisite element of reassurance to support the conviction. A reasonable doubt arose.

12. Indeed, in the case at hand, there is an interval of time of about three months in the conduct of the TI Parade. However, the question as to whether the delay, in the facts and circumstances of the case, is unexplained would be a matter for consideration at the trial. In any event, it is required to be appreciated, whether there is other material which *prima facie* establishes the complicity of the applicant as one of the members of the unlawful assembly in prosecution of the common object of which the deceased was killed, apart from the TI Parade.

13. The prosecution has banked upon the discoveries made by the co-accused leading to the recovery of the weapons of offence in which the applicant has been named as one of the confederates in the conspiracy. It can be urged that the disclosure statement made by an accused is not a legal evidence qua another non-maker co-accused.

14. Another circumstance which the prosecution heavily relies upon is the transcripts of the conversation amongst the accused. Copies of the transcripts alongwith a panchnama are annexed to the charge-sheet. The prosecution case is that accused No.1 claimed to be seized with the spirit of the deceased and used to talk with the rest of the family members and co-accused in the voice of the deceased. The said conversation, according to the prosecution, records the conspiracy which the applicant and co-accused had entered into to eliminate the deceased.

15. Mr. Nikam made an endeavour to urge that the aforesaid circumstance does not have any incriminating tendency qua the applicant as the transcripts of the audio recording do not indicate that the applicant had participated in the conspiracy.

16. The submission is required to be appreciated in the backdrop of the fact that the applicant and co-accused have been arraigned for the offence punishable under Section 120B of the Penal Code as well. The statements attributed to the co-conspirators, in the case at hand, accused No.1 and accused No.4 – Akash @ Kumar Bapu Shete, clearly indicate that there was a long planned conspiracy to eliminate the deceased. In view of the provisions contained in Section 10 of the Evidence

Act, where there is a charge of conspiracy, the doctrine of agency comes into play and the statement made by one of the co-conspirators becomes admissible against another, when the conspiracy is afoot. The transcript of the conversation amongst the accused is required to be appreciated through the aforesaid prism. If one of the co-conspirators was found making statements in pursuance of the conspiracy involving the role of the applicant, it would be rather difficult to draw an inference that there is no material to connect the applicant with the alleged offences.

17. Secondly, there is a formidable dyke in the form of the statement of Shilpa Hagawane, the daughter of accused No.1. She states that after her brother Vishal passed away, on every new-moon and full-moon day, the spirit of Vishal used to take control of accused No.1. At that time, the rest of the family members used to interact with accused No.1 as he was possessed by the spirit of Vishal. There is material to show that the friends of Vishal also attended such sessions.

18. Shilpa Hagawane further informs that on 6th March, 2023 at about 2 to 3 p.m. while she was at her in-laws house at Kirkatwadi, Pune, accused No.1 had come to her house alongwith friends of Vishal including, Prathamesh, the

applicant. At that time, accused No.1 disclosed that he had killed Pappu alias Navnath Renuse. Sensing trouble, she asked accused No.1 to leave her place. Thereupon accused No.1 and his associates left towards Nandoshi. The applicant has been specifically named as one of the four associates of accused No.1, who had visited the house of Shilpa Hagawane on that day.

19. The situation which thus emerges is that, apart from the memorandum of Test Identification Parade, there is material to show the complicity of the applicant. The presence of the applicant alongwith accused No.1 at the house of Shilpa Hagawane, under hours of the occurrence cannot be brushed aside lightly. As noted above, the transcripts of the audio record, when the conspiracy was allegedly afoot, can also be pressed into service against the applicant as the principle of agency applies. In the circumstances of the case, the fact that five of the witnesses have identified the applicant as one of the assailants in the TI Parade deserves consideration. The aspect of delay in conducting the TI Parade, therefore, cannot be a ground to discard the evidence of TI Parade completely, at this stage. If considered cumulatively, a very strong *prima facie* case is made out against the applicant.

20. Since the deceased was killed by using firearms and sharp edged weapons and there is *prima facie* material to show that the applicant was one of the four unknown associates of accused No.1, I am not persuaded to exercise discretion in favour of the applicant.

21. Hence the following order:

: O R D E R :

- (i) 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 co-accused the trial Court shall not be influenced by any of the observations made hereinabove.

In view of disposal of the bail application, IA/4427/2023 also stands disposed.

[N. J. JAMADAR, J.]