

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

BAIL APPLICATION NO. 3326 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Sanjay Chandrashekhar Birajdar @ Patil ...Applicant
Versus

State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO. 289 OF 2024**

Ganesh alias Ganpat Ishwar Gunjal ...Applicant
Versus

State of Maharashtra ...Respondent

Mr. Sudeep Pasbola, a/w Marmik Shah, Rohan Chavan, i/b
Akhil Rao, for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

Mr. Yash Dewal, a/w Sham Thakur, for the Intervener.

PSI N. B. Gaikwad, Shivaji Nagar Police Station, Ambarnath,
present.

CORAM: N. J. JAMADAR, J.

DATED: 15th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in CR No.249 of 2022 registered with Shivaji Nagar Police Station, Ambarnath (E), for the offences punishable under Sections 120B, 302, 307, 387, 324 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), Section 3 read with Section 25 and Section 4 read with Section 27 of the Arms Act, 1959 and Section 135 read with Section 37(1) of the Maharashtra Police Act, 1951.

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

(i) Ganesh @ Ganpat Gunjal, the first informant, is a vegetable vendor. His brother Tushar Gunjal (the deceased) was also engaged in the same business. The first informant had known Sanjay Patil, the applicant, a notorious offender, with many crimes registered against him. Since the year 2007 they had cordial relations.

(ii) The first informant alleged the applicant was released from prison two years prior to the occurrence. The applicant demanded a sum of Rs. 2 lakhs on the count that the work of demolition of a building, which was to be allotted to him, came to be allotted to the first informant. The applicant threatened to stop the said work and eliminate the first informant, if the said amount was not paid. A month prior to the occurrence, the applicant, Nepali @ Louki (A4) and their four associates had assaulted the first informant by means of iron rods and also threatened to eliminate him. However, out of fear, the first informant did not report the matter to police. Also, on 20th July, 2022, the applicant had called the first informant and threatened to kill him. Fearing retaliation, the first informant did not report the matter to police.

(iii) On 29th July, 2022 in between 2.00 to 2.15 pm while the first informant was chatting with his friend Shankar Shitole and Avinash, a metallic gray colour car passed them and stopped at a distance. While the first informant was proceeding towards his home, somebody gave a blow on his head. He fell down. The first informant noticed that the co-accused Nepali @ Louki (A4) and Shankar Shinde (A2) were the assailants. When Shankar Shitole, the first informant's friend, came to his rescue, the accused assaulted him. Co-accused Nepali @ Louki (A4) gave a blow by means of chopper on the left hand and head of the first informant. He raised an alarm. Thereupon the deceased came to his rescue. While the deceased was trying to save the first informant, the co-accused Shankar Shinde (A2) fired a bullet at the deceased. Co-accused Shankar Shinde aimed a shot at the first informant also. However, the pistol became dis-functional. Hearing the alarm raised by the first informant and the deceased, Ganesh Deokar came to their rescue and started to pelt paver-blocks on the co-accused Shankar Shinde (A2) and Louki @ Nepali (A4). Thereupon, the said assailants fled in the metallic gray car in which the applicant was sitting along with another unknown person.

(iv) Thereafter, the deceased was shifted to hospital.

Eventually, the deceased succumbed to the injuries.

4. Mr. Pasbola, the learned Counsel for the applicant, submitted that there is no material to establish the presence of the applicant at the scene of occurrence. Nor any other circumstance to show that the applicant played a role in the alleged occurrence. An endeavour was made to draw home the point that in none of the CCTV footages the applicant has been captured. It was submitted that to rope in the applicant and fill in the lacuna in the prosecution case, the statements of witnesses Yash Jadhav and Sagar Ingale were belatedly recorded. It is thus a case of no evidence qua the applicant, submitted Mr. Pasbola.

5. An effort was also made by Mr. Pasbola to draw home the point that co-accused Nepali @ Louki (A4) and Shankar Shinde (A2) did not intend to cause the death of either the deceased or any other person. Initial assault was by means of a wooden log only. It is after the first informant overpowered one of the assailants, the co-accused allegedly fetched the weapons from the car and mounted the assault. It was submitted that there is not an iota of evidence to show that it was the applicant, who had handed over the chopper and/or pistol to the assailants, as is falsely alleged to rope in the applicant.

6. Mr. Prashant Jadhav, the learned APP countered the submissions on behalf of the applicant. It was urged that the applicant was the mastermind behind the incident in question. The applicant had given threats to eliminate the first informant and upon the refusal of the first informant to pay the amount, the applicant alongwith his hirelings made an attempt on the life of the first informant and caused the death of the deceased, to show that he could execute such threat. Mr. Jadhav further submitted that the applicant is a history-sheeter and a number of crimes have been registered against the applicant.

7. Mr. Yash Dhaval, the learned Counsel for the intervner – first informant, stoutly resisted the prayer for bail. Inviting the attention of the Court to the statements of the witnesses and the CCTV footages, the learned Counsel for the intervener submitted that the applicant being the principal conspirator does not deserve to be enlarged on bail. Attention of the Court was invited to the statements of Suraj Shinde, who was threatened to lodge report against the first informant allegedly by the applicant, and Shailesh Bhoir, in whose presence the applicant had allegedly demanded an extortion of Rs.2,00,000/- amidst a threat that if the amount was not paid he would shoot the first informant.

8. It would be contextually relevant to note that by an order dated 18th January, 2024 this Court was persuaded to release the co-accused Sachin Chikane (A1) on bail. This Court had *inter alia* observed as under:

“15. The statement of Mr. Shankar Shitole, the injured also assumes importance. Shankar Shitole states that initially the assailants were armed with wooden logs. After the initial fight, those two persons went towards Rotary Club. The first informant chased them with a stick. There was a fight between those two assailants and first informant in front of Abhay Art. The first assailant took out the chopper and assaulted the first informant. The second assailant brought a pistol and fired at the deceased. After alarms were raised, those two assailants fled away in the gray car. Shankar Shitole did not state about the presence of the applicant.

16. The statement of Shankar Shitole indicates that at the time of the first fight, the assailants were armed with wooden logs. They ran away. First informant chased them with a stick and at the time of second fight, the assailants took out deadly weapons and assaulted the first informant and the deceased. This sequence bears upon the question of pre-mediation and sharing of common intention.

17. It is true Yash Jadhav and Sagar Ingle have claimed that they had seen the applicant driving the said car at the time of the alleged occurrence. However, the delay of more than one and half month in recording their statements in the absence of the claim of the first informant and Shankar Shitole, who had the opportunity to see the assailants in the car at the close quarters, *prima facie* gives heft to the submissions of Mr. Ponda.

18. As regards the circumstances pressed into service by the prosecution namely, financial transaction between the applicant and the co-accused Sanjay, the applicant having been seen in the company of co-accused Shankar Shinde post the occurrence and the statement allegedly made by the applicant before Ganesh Sonavale that there was a quarrel in which a person had died, *prima facie* do not appear to have such incriminating tendency as to implicate the applicant as a confederate in the conspiracy. Whether the aforesaid circumstances are adequate to draw an inference of criminal conspiracy is a matter for adjudication at the trial.”

9. At the outset, it is necessary to note that Sachin Chikane (A1) was not at all named by any of the witnesses till the statements of Yash Jadhav and Sagar Ingale came to be recorded. The identity of the person who was at the wheel of the Ertiga car, thus, appeared to be in the corridor of uncertainty. It is in that context, this Court was persuaded to release Sachin Chikane (A1) on bail. *Prima facie*, in my view, the principle of parity does not apply. The material on record is thus required to be appreciated independently.

10. First and foremost, it is pertinent to note that in the FIR itself, the first informant had categorically stated that when Ganesh Deokar started to pelt the paver blocks on Shankar Shinde (A2) and Nepali @ Louki (A4), those assailants fled away in an Ertiga car in which the applicant and another unknown person were present. There is thus qualitative difference in the material pressed into service against the said unknown person and the applicant.

11. The material is required to be appreciated in the light of the fact that the first informant had known the applicant since prior to the alleged incident. There was a prelude of alleged assault and intimidation by the applicant for alleged non-payment of the extortion amount. *Prima facie*, the

instantaneous lodging of the report naming the applicant as the person who was present in the Ertiga car, deserves due weight.

12. In this view of the matter, even if the statements of Yash Jadhav and Sagar Ingale, which were recorded after about 40 days of the occurrence, are eschewed from consideration, it can not be said that there is no material to show *prima facie* complicity of the applicant.

13. At this juncture, the statement of Shailesh Bhoir, the partner of the first informant, also bears upon the complicity of the applicant. Shailesh Bhoir categorically stated that the applicant had visited the work site and demanded a sum of Rs.2,00,000/- and threatened to shoot them if the amount was not paid. Suraj Shinde, another witness, stated that the applicant had forced him to lodge a report against the first informant with the allegations that the first informant had attempted to kill him. The prelude to the occurrence, therefore, deserves to be kept in view.

14. The thrust of the submission of Mr. Pasbola that the CCTV footages do not show presence of the applicant in the car, and, therefore, it cannot be said that the applicant was present at the time of the alleged occurrence, does not merit acceptance at this stage. As noted above, the first informant has

specifically stated that the applicant was present in the car. There is material to indicate that the assailant had come in the said car and assaulted the first informant and the deceased and, thereafter, fled away in the very same car.

15. *Prima facie* there is material to show that the applicant had a motive. There is further material to show that on the very day, the applicant was seen in the Ertiga car at Mulund Toll Plaza. Thus the mere fact that the applicant was not captured in the CCTV footage, by itself, is not sufficient to disprove the presence of the applicant at the scene of occurrence as the first informant had known the applicant and had the opportunity to see the applicant at the time of the alleged occurrence.

16. The conspectus of aforesaid consideration is that there is a strong *prima facie* case against the applicant. Having regard to the fact that the deceased was shot at in broad day light, purportedly in pursuance of a conspiracy hatched by the applicant, who had an axe to grind against the first informant, in my view, this is not a fit case to release the applicant on bail.

17. 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 trial Court shall not be influenced by any of the observations made hereinabove.

In view of disposal of BA/3326/2023, IA/289/2024 also stands disposed.

[N. J. JAMADAR, J.]