

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

REVISION APPLICATION NO. 34 OF 2024

Omprakash @ Babloo @ Arjun
Vishwanath Prasad Shrivastav

...Applicant

vs.

The State of Maharashtra

...Respondent

Senior Advocate Raja Thakare a/w. Adv. Chaitanya Kotnis a/w. Adv. Dhananjay Kandharkar :-	Advocate for Applicant.
Mr. A. D. Kamkhedkar :-	APP for Respondent.
Mr. Nandkumar Bedwai, P. I. :-	Crime Branch, Unit Two, Pune.

CORAM : S. M. MODAK, J.

DATE : 15th JULY 2024

P. C. :-

1. Heard learned Senior Advocate Mr. Thakare for the Applicant /
Accused and learned APP.

2. There is an offence registered with Wanvadi Police Station on
23rd May 1998. It is on complaint of one Sameer Balasaheb Ladkat. It
is an offence under Sections 302, 397, 341, 364, 201, 120(B) of Indian
Penal Code [‘I.P.C.’]. The first informant Sameer Ladkat is a brother of

deceased Sagar Ladkat. When he was returning home on 22nd May 1998 at about 9:30 p.m. in his car, some unknown persons fired at him and assaulted him with sharp edged weapon and they have killed him. During the investigation the Police have filed charge sheet against five persons. Charge sheet was filed in the Court of Additional Sessions Judge, Pune and charge was framed on 19th September 2005. Present Applicant is arrested subsequently and there is a supplementary charge sheet. The allegation against Applicant is that of conspiracy.

3. When the offence took place, he was undergoing sentence in Lucknow jail. He applied for discharge however, it was rejected by the trial Court as per the order dated 21st December 2022. That is why present Revision. It is true that while dealing with discharge Application under Section 227 of Criminal Procedure Code [‘Cr.P.C.’] the test is “*whether there is sufficient material to proceed*”. This test has to be satisfied after going through the materials collected during investigation. There are settled principles for performing this function. Those are as follows :-

- (i) Detailed scrutiny is not expected;
- (ii) Whether one material corroborates with another material need not be seen;

- (iii) The materials are to be presumed as correct; and
- (iv) The Court has to find out whether there is a grave suspicion and not mere suspicion.

4. If these principles are considered and if the materials collected through the charge sheet is considered, I find the trial Court has committed an error in rejecting the Application. There is allegation of conspiracy. This conspiracy is as from the jail. The Applicant was in touch with one witness by name **Manjeetsing Ranjeetsing Sharma.** Except this statement, there are no materials pointed out to me showing complexity of this Applicant. With their assistance I have read the said statement. He has stated following facts :-

- (a) He knows present applicant from the last 10 years;
- (b) He has committed an offence in Uttar Pradesh on the instigation of Applicant and that is why the Police of Uttar Pradesh wants to arrest him;
- (c) In the month of March 1996 he went to Nepal – Kathmandu to meet one Dilshad Mirza.
- (d) It was learnt that the Applicant is in contact with Irfan Goga and Daud Ibrahim and those persons have committed offence in India through Dilshad Mirza and present Applicant.

- (e) The present Applicant is arrested by Mumbai Police and the gang is managed by Archana Sharma.
- (f) Pune Police has shown to him photograph of Fazal Urraheman.

All these details are vague for the commission of present offence. What is relevant is the Applicant was wanted in Allahabad and Lucknow area. Occasionally he was contacting Applicant on his mobile number 9839054145.

5. Learned APP has invited my attention to the affidavit filed by P.I. Nandkumar Bidawai. The Police have collected the C. D. R. and it was revealed that there are three mobile numbers used by this Applicant. They are reflected in ground (e). They are as follows :-

- (i) 9839050319 ;
- (ii) 9839011884 ; and
- (iii) 9839054145

6. The Applicant is undergoing life sentence imposed by the Kanpur Court in a T. A. D. A. case.

7. According to learned Senior Advocate Mr. Thakare there are lacuna in this material. The identity of this cell members is not

established by collecting materials. Police does not know in whose name these mobile numbers stand.

8. I fully agree with the submissions of Mr. Thakare. Merely remaining in contact with the witness is not sufficient to frame charge of conspiracy. Merely C. D. R. are not sufficient. They have to establish the person who has called and the person who has received the call. There must be material about the exact conversation but the identity of these mobile numbers is not shown by collecting materials. So I think there is no sufficient material.

9. When I read the order of the trial Court the trial Court has referred about two statements of witnesses. One **Mohammad Naim** and **Shaikh Ibrahim** in paragraph No.10 (Page No.622 and 638). With the assistance of both of them I have read both the statements.

10. There were phone calls on landline number of Said Adam but he was not knowing the caller because he was not there in the house. The information received about hatching a conspiracy including present Applicant and murdering Sagar Ladkat is after reading newspaper. This is statement of Said Adam dated 26th January 1999.

11. Whereas Mohammad Naim is a person on whose telephone there is a phone call on 12th May 1998 by one Shafik Bashir and he enquired about Goga Irfan. The present Applicant is a member of Irfan Goga gang. However, this is a form of opinion and not on the basis of concrete information.

12. In paragraph No.4 the trial Court has referred statement of Mohammad Naim dated 25th January 1999. I have read it. In last paragraph the witness has stated that Shafik is involved in the gang run by present Applicant whereas the witness Shaikh Alam has stated about the knowledge after reading paper that the Sagar Ladkat was assaulted and Babloo Shrivastav is involved. This cannot be said to be the material to frame charge. This is of hear say. No doubt conspiracy is hatched at a secrete place. Conspiracy can be shown on the basis of meetings, conversation, interaction, correspondence, etc. It cannot be on the basis of surmises. So it cannot be said that there is grave suspicion.

13. I do not agree with the observations of the trial Court. Case for discharge is made out. Hence the order :-

ORDER

- (i) Revision is allowed.
- (ii) Order dated 21st December 2022 passed by Additional Sessions Judge, Pune is set aside.
- (ii) Applicant – Omprakash @ Babloo @ Arun Vishwanath Prasad Shrivastav is discharged from Sessions Case No. 219 of 1999 pending before the Court of Additional Sessions Judge, Pune.
- (iii) Bail bonds of the Applicant / accused stands discharged.
- (iv) The Applicant - Omprakash @ Babloo @ Arun Vishwanath Prasad Shrivastav be released from jail if not required in any other case.

[S. M. MODAK, J.]

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