

Ajay

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

**BAIL APPLICATION NO. 198 OF 2024**

Rafique Salim Hashmi

.. Applicant

**Versus**

State of Maharashtra

.. Respondent

- .....
- Mr. Shubham Upadhyay a/w. Mr. Fahad Qureshi, Advocates for the Applicant.
  - Mr. Y. Y. Dabke, APP for the Respondent – State.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JULY 05, 2024.**

**P.C.:**

**1.** Heard Mr. Upadhyay, learned Advocate for Applicant and Mr. Dabke, learned APP for Respondent – State.

**2.** This is a Bail Application filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “**CrPC**”) seeking bail by the Applicant namely Rafique Salim Hashmi in connection with CR No.126 of 2023 registered with Nerul Police Station for the offences punishable under Sections 302, 120B and 34 of the Indian Penal Code, 1860 (for short “**IPC**”); Sections 3, 5, 25 and 27 of the Arms Act, 1959 alongwith Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

**3.** Briefly stated, there are in all 7 accused, out of which 5 accused have been arrested, and 2 accused are absconding. Accused

No.1 namely Mahek is the main accused. On the basis of his statement, Applicant before me has been indicted. Crime came to be registered on the basis of a report dated 15.03.2023 filed by one Dhiraj Savajibhai Manjeri having office at CBD, Belapur. First Informant stated that on 15.03.2023, his father left for work at 11:00 a.m. at Nerul and returned back to his house at 05:00 p.m., but again left for his office. On his way, he received telephonic information that at about 05:10 p.m. his father Savajibhai Manjeri was shot near Apna Bazaar, Nerul. He immediately reached the spot of incident and found his father lying in a pool of blood alongwith blood stains and bullets strayed around. He shifted his father to NMMC Hospital, Vashi where he was declared dead before admission / treatment.

**4.** Investigation commenced and it is prosecution's case that absconding accused namely Haribhai, cousin brother of the deceased Savajibhai was having a grudge due to certain family disputes emanating from their native village as also in the construction industry wherein both of them were operating.

**5.** In that view of the matter, Haribhai engaged accused No.1 namely Mahek to recce the movements of Savajibhai. Accused No.1 – Mehek was working as a contractor on his own for installation of CCTV cameras and he had installed CCTV cameras in Savajibhai's office. The absconding accused promised a bounty to accused No.1 Mahek. In

turn, accused No.1 contacted the present Applicant and asked him if he could arrange for any assistance to eliminate Savajibhai at the instance of his cousin brother Haribhai.

**6.** Statement given on 06.04.2023 by accused No.1 is placed before me by the prosecution. Accused No.1 categorically states therein that present Applicant immediately desisted from the idea of rendering assistance whatsoever to accused No.1. However, the statement further reads that the present Applicant thereafter informed one of his friend who was a mason namely Rahul – accused No.7 to consider helping accused No.1. Accused No.7, it appears alongwith accused No.1 went ahead with the conspiracy. The incident took place in the evening on 15.03.2023.

**7.** Applicant before me is a welder by profession. He is 33 years old having 3 children and alongwith his family resides at Village Kherwadi, Bandra. Indictment of Applicant is solely on the basis of the statement of accused No.1 that he was instrumental in erasing the engine number and chassis number of the motorcycle which was used in the commission of crime. Incidentally, that particular motorcycle was recovered from a place little ahead of the spot of incident after 3 days of the commission of the crime. Admittedly, it was recovered on 18.03.2023 and inside the bike some chit was found on the basis of which prosecution traced down to the present Applicant in Bandra.

Assuming for the sake of argument, that even if as a welder by profession, if the Applicant has erased the engine number and chassis number of the motorcycle used in the commission of crime, how the Applicant can be linked to the crime is not seen by the Court. The date of erasure as can be seen from the prosecution case is 12.03.2023.

**8.** What is crucial is that save and except circumstantial evidence, there is nothing placed on record to link the Applicant with the present crime except circumstantial evidence. In so far as consideration of Bail Application is concerned, undoubtedly prosecution can always rely upon circumstantial evidence and prove its case by *prima facie* establishing the chain of circumstances to indict the accused, but that is not the case herein. Mr. Dabke, learned APP would submit that the above reason and availability of CCTV footage and CDR is enough to reject the Bail Application.

**9.** Mr. Dabke, learned APP would submit that presence of Applicant in CCTV footage collected by prosecution would show that Applicant was accompanied by accused No.1, 3 days prior to the date of crime in the area where the crime took place. That apart, he would submit that there is substantial CDR placed on record by prosecution to establish the interaction and nexus of calls received to and from by the various accused.

**10.** In support of his submissions, Mr. Dabke has placed on

record a chart depicting nexus of all accused qua each other between 12.03.2023 to 15.03.2023. The chart itself shows that on 15.03.2023 present Applicant was not in contact with any other accused who may be definitely involved. CDR from 12.03.2023 and 13.03.2023 as also the CCTV footage are purely circumstantial, they neither establish the veracity nor the involvement of the present Applicant at least on *prima facie* basis. Such circumstantial evidence does not show the direct or indirect involvement of Applicant.

**11.** There is one more issue pointed out by Mr. Dabke for rejection of the Application and that is the Applicant was involved in booking a taxi for accused Nos.2, 3 and 4 from Bandra Railway Station to Nerul on the day of the crime. Prosecution has recorded statement of the Taxi driver wherein he has stated that he knew the Applicant. Save and except assuming that even if that taxi was booked by Applicant it cannot show the indictment of the Applicant in the commission of the crime.

**12.** Mr. Dabke has referred to and relied upon the decision of the Supreme Court in the case of *Ishwarji Nagaji Mali Vs. State of Gujarat and Anr.*<sup>1</sup> and more specifically paragraph No.9 of the said judgment which reads thus:-

*“9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the present case, the impugned order passed by the High Court directing to release respondent no.2*

---

<sup>1</sup> 2022 6 SCC 609

*herein on bail is unsustainable both, on law as well as on facts. Whatever reasons are given by the High Court are not germane. As observed hereinabove, the High Court has not at all adverted to the relevant material/evidence collected during the course of the investigation, which are the part of the charge-sheet. During the course of the investigation and even as per the charge-sheet it is alleged that for the monetary benefits, respondent no.2 hatched a criminal conspiracy with other co-accused to kill his wife and tried to make out an accidental case. During the course of the investigation, it has been revealed that respondent no.2 took the accidental insurance policy jointly with his wife on 29.09.2020 of Rs. 60 lakhs. The date of the offence is 26.12.2020 at 7:00 a.m. During the course of the investigation and from the call details, it has been revealed that respondent no.2 was in constant touch on phone with the other co-accused from 4:22 a.m. to 6:25 a.m. on 26.12.2020. During the course of the investigation and as per the charge-sheet, according to the prosecution, as a part of the conspiracy, respondent no.2 – Lalitbhai Ganpatji Tank took his wife to Hanumanji Temple on foot and as he got the chance in the way, he made phone call to the co-accused Kirtikumar Kanaji to finalise the plan. Kirtikumar Kanaji made phone call to another co-accused Mahesh (driver of the Swift Car) and thereafter the co-accused Mahesh hit the deceased Daxaben by the said car and committed murder from the back side so as to consider it as an accidental death. During all these times, all the accused were in touch on phone calls. Therefore, looking to the seriousness of the offence and looking to the nature and gravity of the offence committed by respondent no.2, the High Court ought not to have released respondent no.2 on bail. While releasing respondent no.2 on bail, the High Court has not at all considered the parameters to be considered while releasing the accused on bail and that too in a serious offence of murder and hatching conspiracy to kill his wife. The impugned order passed by the High Court releasing respondent no.2 cannot be sustained and the same deserves to be quashed and set aside.”*

**13.** I have perused the judgment. The facts in the above case are entirely different.

**14.** In view of the above observations and findings, the chain of circumstances having not been established *prima facie*, I am of the clear opinion that Applicant deserves to be enlarged on bail since his indictment is entirely on the basis of confessional statement of accused

No.1 which was recorded on 06.04.2023 which is almost 21 days after the commission of the crime.

**15.** In that view of the matter, Applicant deserves enlargement on bail. Hence, the following order:-

- (i) Applicant – Rafique Salim Hashmi, who is incarcerated in connection with CR No.126 of 2023 registered with Nerul Police Station for the offences punishable under Sections 302, 120B and 34 of the Indian Penal Code, 1860 (for short “**IPC**”); Sections 3, 5, 25 and 27 of the Arms Act, 1959 alongwith Sections 37(1) and 135 of the Maharashtra Police Act, 1951, is ordered to be released on bail on the sum of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties of the like amount;
- (ii) Applicant shall report to the Nerul Police Station once every month on the first Wednesday between 11:00 a.m. to 06:00 p.m. until framing of charges;
- (iii) Applicant is prohibited from entering the jurisdiction of Nerul Police Station except for reporting until the trial is concluded;

- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport with the I.O. within two weeks;
- (vi) Applicant shall not influence the witnesses or tamper with the evidence in any manner; and
- (vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable.

**16.** Bail Application No.198 of 2024 is allowed and disposed.

[ MILIND N. JADHAV, J. ]

Ajay

AJAY  
TRAMBAK  
UGALMUGALE

Digitally signed by  
AJAY TRAMBAK  
UGALMUGALE  
Date: 2024.07.05  
19:00:53 +0530