

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.378 OF 2024

Mehak Jayrambhai Nariya

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Kuldeep Patil a/w. Mr. Ranjeet Patil, Mr. Sumitkumar Nimbalkar and Ms. Kalpana Chate, Advocates for Applicant.
- Smt. Veera Shinde, APP for Respondent - The State of Maharashtra.
- Mr. Ayush Pasbola a/w. Mr. Sankalp Vichare, Advocate for Intervenor.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 01, 2024

P.C.:

1. Heard Mr. Patil, learned Advocate for Applicant, Smt. Shinde, learned APP for Respondent – State of Maharashtra and I have permitted Mr. Pasbola, learned Advocate for Intervenor (First Informant) to address me after hearing submissions of the parties to the present Application.

2. This Bail Application nomenclatured as Bail Application No.378 of 2024 is filed under Section 439 of Criminal Procedure Code, 1973 (for short ‘Cr.P.C.’) for bail by Applicant namely Mehak Jayrambhai Nariya – the Accused No.1 in connection with C.R.No.126 of 2023 registered with Nerul Police Station for offences punishable under Section 302, 120B, 34 of the Indian Penal Code, 1860 (for short ‘IPC’); Section 3, 5, 25 and 27 of the Indian Arms Act, 1959 and

Section 37(1) and 135 of the Maharashtra Police Act, 1951. Out of the seven accused, five have been arrested. According to prosecution theory Accused No.6 is the person who is the chief conspirator having planned the crime against the deceased. Though at one place prosecution also states that the Accused No.1 namely Mehak Jayrambhai Nariya is the main accused but on reading the prosecution case as enumerated and elucidated in the charge-sheet that is not so. The indictment of Accused No.1 is made by the prosecution on three grounds. Before I advert to the same, briefly stated, the crime came to be registered on the basis of report dated 15.03.2023 filed by one Dhiraj Savajibhai Manjeri (First Informant) who is the son of deceased. According to First Informant, on 15.03.2023 the deceased returned from his office and was about to leave once again for the work place i.e. office but as soon as he was about to enter his car, he was shot dead by some unknown persons. The First Informant rushed to the scene of crime which was at a little distance away from the residence of the deceased near Apna Bazaar, Nerul and moved his father to the nearby NMMC Hospital at Vashi where he was declared dead before admission.

3. According to prosecution's case Accused No.6 namely Haribhai Nor who is related to the deceased and also hailing from the same village in Gujarat was having a feud and dispute since long with the deceased. The feud relates back to certain family disputes

emanating from their native village as also their business operations in Navi Mumbai and the role of the deceased in a previous incident of the year 1998 wherein the deceased was acquitted. According to prosecution, Accused No.6 engaged the Applicant to recce the movements of the deceased. Applicant before me is a resident of C.B.D. Belapur, hails from the same village as that of deceased and he is a Closed Circuit Television (for short '**CCTV**') Camera installation mechanic. Admittedly and even according to prosecution he does not have any antecedents. He is 28 years old and was living in C.B.D. Belapur.

4. Mr. Patil, learned Advocate appearing for the Applicant has drawn my attention to the order dated 05.07.2024 passed in Bail Application No.198 of 2024, *inter alia*, enlarging the Accused No.5 i.e. Rafique Salim Hashmi on bail and would while drawing a parallel submit that case of Accused No.1 is on a much higher footing for considering his enlargement on bail. He would submit that three specific charges are attributed to the Applicant by the prosecution as can be seen from prosecution's case. Firstly, he would submit that the motor cycle (vehicle) used in the crime has been alleged to have been procured and purchased by Applicant for commission of the crime. He would submit that according to prosecution an amount of Rs.25,00,000/- was disbursed to the Applicant for further disbursement of the same to other accused to carry out the crime. He

would submit that it is Accused Nos.2, 3 and 4 according to the prosecution's case and theory who committed and executed the actual crime. According to him on the issue of disbursement of Rs.25,00,000/- there is no evidence rather no *prima facie* evidence. With respect to procurement of the motor cycle (vehicle) which is the first charge, he would submit that the said vehicle originally belonged to one Mr. Ingale who sold it to one Mr. Danish and he in turn sold it to Mr. Shabbir from whom the Applicant purchased the same on 08.02.2023 for Rs.15,000/-. He would submit that being a CCTV Camera installation mechanic he was required to move from place-to-place for the purpose of his work and assuming at the highest that he had even procured the said motor cycle, there is no *prima facie* evidence to show that it was procured at the behest of the Accused No.6 as per the prosecution's theory for commissioning the crime.

5. Next he would submit that charge of prosecution is that Applicant was spotted alongwith Accused No.5 on the same motor cycle at a nearby junction called Sarsole junction on Palm Beach road which leads to Sector No.17 and Sector No.20 at Nerul where the incident had occurred. The dates are crucial according to Mr. Patil. He would submit that according to CCTV Reports which are appended by prosecution, Applicant is spotted alongwith Accused No.5 on 12.03.2023, 13.03.2023 and 15.03.2023. There is one more charge in the prosecution's case against Applicant and i.e. his Call Detail Records

(for short 'CDR') showed that his location was in the nearby vicinity of Palm Beach road near Sarsole junction on the above dates. However, he would submit that on perusal of the CCTV footage which cannot be ascertained with any certainty, *prima facie* as to whether Applicant was spotted with Accused No.5 on 12.03.2023 13.03.2023 and 15.03.2023 is questionable. He would submit that if it is the prosecution's case that the motor cycle used in the commission of crime was handed over to Accused Nos.2, 3 and 4 by Applicant, then the theory of having spotted him on 15.03.2023 cannot be believed or rather should not be believed. He would submit that Applicant is a resident of C.B.D. Belapur and considering his nature of work at the highest even if his CDR location is traced on the aforesaid dates to be near Palm Beach road, it could always be possible due to his movement from C.B.D. Belapur to the satellite city of Navi Mumbai as also, Mumbai for work purposes as the most accessible road is Palm Beach road thereto and therefore merely CDR location cannot be held attributable to commission of the crime with any corroborative evidence of transcripts.

6. He would draw my attention to the admitted fact of recovery of the motor cycle having been recovered three days after the commissioning of the crime on 15.03.2023. Though it is the case of prosecution that the motor cycle was abandoned by Accused Nos.2, 3 and 4 very close and nearby to the scene of crime, recovery after three

days is critical.

7. PER CONTRA, Ms. Shinde, learned APP for the Respondent – State of Maharashtra has drawn my attention to the principal charge against the Applicant namely relating to procurement of the motor cycle. She has drawn my attention to one of the statement which is on record of one Mr. Shabbir appended at page No.189 of the Application and would submit that according to the prosecution it is the Applicant who procured and bought the motor cycle on the basis of xerox papers on 08.02.2023. She would submit that spotting of the Applicant alongwith Accused No.5 on 12.03.2023 is proved by the prosecution *prima facie* and has drawn my attention to page No.118 wherein it is stated that appearance of Accused No.5 with Applicant has been noted while preparing the report of their appearance on CCTV on 12.03.2023 and 13.03.2023. However, at this stage I must state that the submissions made in the report cannot be corroborated by the photographs which are appended thereto.

8. Ms. Shinde would next submit that prosecution's theory of Accused No.5 and Accused No.6, being the principal conspirators having met on 12.03.2023 is clearly identified in the CCTV footage, the report of which is placed at page Nos.120 and 124 of the Application. Once again the written report needs to be corroborated and the photographs are unidentifiable. However, in her usual fairness she

would argue that the CCTV footage which is appended at page No.106 depicting recovery of the motor cycle, does not clearly identify the number of the said motor cycle and it could not be ascertained as to it was the same motorcycle which was used in the crime. Though it is observed that on the issue of colour of the motor cycle there is a dichotomy in respect to whether the said motor cycle was white in colour or whether the said motor cycle was black and white in colour. All these issues would undoubtedly be a matter of trial and evidence. In any event there are circumstantial issues which leave a lot to be explained regarding the role of Applicant.

9. I have permitted Mr. Pasbola, learned Advocate for Intervenor (First Informant) at his request to address me. In his brief submissions Mr. Pasbola would draw my attention to the statement of Mr. Shabbir at page No.189 which was also drawn attention to by Ms. Shinde to argue that the vehicle used in commission of the crime was indeed procured by Applicant and it is a strong piece of circumstantial evidence after it has been recovered. He would next submit that the statement of one of the witnesses namely Anubhav Bele appended at page No.239 of the Application identifies the Accused Nos.2 and 3 on the basis of his photographs as having seen them on the date of incident in the vicinity of the incident, but this does not go against the Applicant.

10. I have heard Mr. Patil, learned Advocate for Applicant, Smt. Shinde, learned APP for Respondent – State of Maharashtra and Mr. Pasbola, learned Advocate for Intervenor. With their able assistance, I have perused the pleadings and record of the case. Submissions made on behalf of the learned Advocates have received due consideration of this Court.

11. The Applicant is arrested on 18.03.2023. In the course of his submissions Mr. Patil has drawn my attention to page No.192 which is statement of Dr. Ravikant recorded by the prosecution which clearly shows that the prosecution had visited the residence of Applicant on the previous day prior to the date of his arrest on 17.03.2023 for making enquiry. It is trite that statements recorded by police of co-accused in custody cannot be looked into unless they are corroborated by cogent material which *prima facie* establishes the linkage of the Accused to the crime. In the present case, it is seen that the case of the prosecution in indicting the Applicant being Accused No.1 rests on the three charges which are referred to and alluded to hereinabove while recording the submissions made by Mr. Patil. It is further seen that without the transcripts to corroborate the CDR Report, the said report cannot be held to be good. The Applicant before me is 28 years old who is been indicted solely on the basis of the statement of Accused No.2 which has also been read to me by the parties. That confessional statement is at page No.105 of the Application. It is seen that the

motor cycle used in the crime committed in the present case was recovered from a place just ahead of the incident spot after three days after commission of the crime. The prosecution theory is that based on some chit found inside the said motor cycle the prosecution traced down the said motor cycle to Accused No.5 and through Accused No.5 to the Accused No.1. The aforesaid evidence does not inspire the confidence of this Court *prima facie*. Undoubtedly, prosecution is entitled to rely upon circumstantial evidence and prove its case so as to even *prima facie* establish the chain of circumstances to indict an Accused but in my opinion the prosecution has not made out a good case in so far as the Applicant is concerned. Undoubtedly, the contentions of prosecution are kept expressly open to be determined at the time of the trial. In view of the above observations and findings and chain of circumstances, *prima facie* having not been established, I am of the opinion that Applicant deserves to be enlarged on bail since indictment is only on basis of circumstantial evidence theorised by the prosecution, since I do not regard CCTV footage and CDR Report for even procurement of the motor cycle by the Applicant to be adequate enough to continue the incarceration of the Applicant.

12. In view of the above, Applicant is enlarged on bail on the following conditions:-

- (i) Applicant – Mehak Jayrambhai Nariya, who is

incarcerated in connection with CR No.126 of 2023 registered with Nerul Police Station for the offences punishable under Sections Section 302, 120B, 34 of the Indian Penal Code, 1860; Section 3, 5, 25 and 27 of the Indian Arms Act, 1959 and Section 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 12:00 noon 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.

13. Bail Application No.378 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed by
HARSHADA
HANUMANT
SAWANT
Date: 2024.08.01
18:14:05 +0530