

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2598 OF 2024
WITH
INTERIM APPLICATION NO.2744 OF 2024

Divyesh @ Vicky Lalitkumar Ganatra	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Shantanu Phanse, Ms. Priyanka Chavan and Ms. Ilsa Shah, for the Applicant.
Mr. Manoj Mohite, Senior Advocate a/w. Mr. Raju Suryavanshi, for the Intervener.
Mr. A.A. Naik, APP for the State.

RESERVED	: SEPTEMBER 26, 2024
PRONOUNCED	: OCTOBER 4, 2024
CORAM	: N. J. JAMADAR, J.

P.C.:

1. The applicant, who is arraigned in C.R.No. 171 of 2024 registered with Hill Line police station, Thane for the offences punishable under sections 120-B, 307, 143, 147, 148, 149, 109, 323 and 504 of Indian Penal Code, 1860 (the Penal Code) and section 30 of the Arms Act, 1959 seeks to be enlarged on bail.

2. Mahesh Gaikwad (the injured) is a former Municipal Councilor of Kalyan Dombivali Municipal Corporation and City Unit President of a political party. Ganpat Gaikwad (accused No. 1) is a member of the Maharashtra Legislative Assembly. He represents Kalyan-East constituency. Ganpat Gaikwad (accused No. 1) belongs

to another political party. On account of political rivalry, there have been disputes between Mahesh Gaikwad and Ganpat Gaikwad (accused No. 1).

3. On 31st January, 2024 there was an altercation between Mahesh Gaikwad and Ganpat Gaikwad (accused No. 1) allegedly over acquisition of property of one Eknath Jadhav, by a developer without payment of full consideration. An altercation had also occurred on 1st February, 2024 over the same issue.

4. The prosecution alleges, on 2nd February, 2024, the members of both the groups reached Hill Line police station insisting for registering FIR against the rival group. At about 9.30 pm while Mahesh Gaikwad, Rahul Patil and Chainu Jadhav (the first informant) were sitting in the cabin of Senior PI, Ganpat Gaikwad (accused No. 1) and the applicant (accused No. 4) entered the said cabin. After a while, Vaibhav Gaikwad (the absconding accused) and the son of Ganpat Gaikwad (accused No. 1) also entered the said cabin. As there was commotion and the members of both the groups were charging on each other, the police personnel and Senior PI Mr. Anil Jagtap were trying to restrain and pacify them.

5. The applicant, it is alleged, initially had a word with Ganpat Gaikwad (accused No. 1) and went outside and re-entered the cabin a number of times. As the commotion escalated, Senior PI Jagtap

came out of the cabin. The applicant allegedly made a gesture to Vaibhav Gaikwad, the son of Ganpat Gaikwad (accused No. 1). They both went out of the cabin. Thereafter, while Mahesh Gaikwad, Chainu Jadhav and Rahul Patil were sitting in the cabin Ganpat Gaikwad (accused No. 1) suddenly took out a revolver from his waist and started firing at Mahesh Gaikwad and Rahul Patil. Vaibhav Gaikwad, Senior PI Jagtap and other police personnel and others rushed into the cabin. Harshal Kene (accused No. 2), a private body guard of Ganpat Gaikwad (accused No. 1) also started firing. Mahesh Gaikwad and Rahul Patil sustained gun shot injuries. As Mahesh Gaikwad fell down, Ganpat Gaikwad (accused No. 1) continued to assault Mahesh Gaikwad by the butt of the revolver. Senior PI and other police personnel overpowered Ganpat Gaikwad (accused No. 1). Eventually, Ganpat Gaikwad (accused No. 1) and Harshal Kene (accused No. 2) were disarmed.

6. The prosecution alleges Ganpat Gaikwad (accused No. 1) fired at Mahesh Gaikwad and Rahul Patil with intent to kill them in pursuance of a criminal conspiracy. The accused and their associates were overheard discussing the plan hatched to kill Mahesh Gaikwad, by the witnesses. The applicant had accompanied Ganpat Gaikwad (accused No. 1) to the cabin of Senior PI in pursuance of the said conspiracy. The entire incident has been

captured in the CCTV. The acts and conduct of the applicant immediately prior to and after the occurrence demonstrate that the applicant was a prime conspirator.

7. Mr. Aabad Ponda, learned senior advocate for the applicant, submitted that there is no material to rope in the applicant as a co-conspirator. At the time of actual occurrence only Ganpat Gaikwad (accused No. 1) was present in the cabin. Neither the applicant was armed with any weapon nor the applicant participated in the fight that ensued after persons entered the cabin hearing the sound of gun shot. Mere presence of the applicant in the cabin prior to the occurrence and the fact that after the occurrence the applicant had again entered the cabin, does not indicate that the applicant was privy to the offence.

8. An endeavour was made by Mr. Ponda, to urge that the material on record singularly fails to demonstrate that there was a prior meeting of mind between the applicant and the assailants. On the contrary, the images in CCTV would indicate that after the applicant and Vaibhav Gaikwad went out of the cabin, Ganpat Gaikwad (accused No. 1) suddenly started shooting. Reliance was placed on a decision of the Supreme Court in the case of **Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra**¹ to bolster up the submission that the element of agreement to commit the offence,

1 (2008) 10 Supreme Court Cases 394.

which is the linchpin of the criminal conspiracy, is missing in this case.

9. Mr. Naik, learned APP, strongly opposed the prayer for bail. The facts that the applicant accompanied Ganpat Gaikwad (accused No. 1) since beginning and conferred with him, even after the incident, were pressed into service to show that the applicant was very much privy to the offence. Mr. Naik further submitted that there is material to indicate that the applicant gave way to Harshal Kene (accused No. 2), the personal body guard of Ganpat Gaikwad (accused No. 1) to enter the cabin after the sound of gun shot. The calm and composed manner in which the applicant moved around even after such ghastly incident of shooting in the cabin of Senior PI, according to Mr. Naik, manifests the knowledge on the part of the applicant that the crime was to be committed in that fashion. If the material on record is appraised in the light of the prior and subsequent conduct of the applicant, the applicant can also be said to be a perpetrator of the offence and not just a conspirator, urged Mr. Naik.

10. Mr. Manoj Mohite, learned senior Advocate for the intervener, supplemented the submissions of learned APP. Mr. Mohite would urge that if the CCTV footages are seen in isolation, one may draw an inference that there is nothing beyond the presence of the

applicant with Ganpat Gaikwad (accused No. 1) prior to the occurrence. However, the incident is required to be viewed as a whole and in the light of the prelude and sequel to the occurrence. Mr. Mohite submitted that there are statements of witnesses to the effect that, on 31st January, 2024, the associates of Ganpat Gaikwad (accused No. 1) were overheard discussing the plan to eliminate Mahesh Gaikwad. Even at the time of the occurrence, Vaibhav Gaikwad, the absconding accused, was heard instructing Harshal Kene to wait outside the cabin and enter the cabin after hearing the gun shot as planned.

11. Mr. Ponda, joined the issue by submitting that the aforesaid statements, which the prosecution banks upon, were recorded belatedly in the month of March, 2024 to suit the prosecution case. At any rate, none of the witnesses has stated that the applicant spoke about the alleged plan.

12. As there was a controversy over the exact sequence of events which transpired in the cabin of Senior PI, the video recording of the images captured in the CCTV at the cabin of Senior PI was viewed in the Court in the presence of the counsel for the parties and learned APP.

13. The incident in question, is a manifestation of the deep rooted malice of criminalization of politics. The incident also highlights the

nexus between peoples representatives and the persons engaged in the real estate business. The genesis of the offences is in the turf-war over developing of properties in urban areas, where land is scare. What sets apart the case at hand is the brazen manner in which an elected representative of people allegedly shot the political and business rivals in the cabin of Senior PI. The allegations are grave. As many as six gun shot injuries were sustained by Mahesh Gaikwad and two bullets were fired at Rahul Patil.

14. The complicity of the applicant is required to be appreciated albeit prima facie from the perspective of entitlement for bail, in the context of the role attributed to the applicant. The statements of the witnesses coupled with the images in CCTV footage, indicate that the applicant had accompanied Ganpat Gaikwad (accused No. 1). Initially, the applicant had a word with Ganpat Gaikwad (accused No. 1). Thereafter on 3-4 occasions the applicant went out of the cabin and again came back. 40 odd seconds prior to the alleged incident, the applicant and Vaibhav Gaikwad, the absconding accused went out of the cabin. Thereafter, Ganpat Gaikwad (accused No. 1) took out the revolver from his waist and started shooting. After the police party managed to neutralize Ganpat Gaikwad (accused No. 1) and Harshal Kene (accused No. 2), the

applicant again entered the cabin. At this stage, the Court may proceed on the premise that the applicant conferred with Ganpat Gaikwad (accused No. 1) when he was detained inside the ante-chamber of Senior PI.

15. The pivotal question that wrenches to the fore is, whether there is prima facie material to show that the applicant was a confederate in the conspiracy. The charge of conspiracy is sought to be substantiated on the basis of the statements of Mahesh Gaikwad, Shekhar Dhanve, the private body guard of Mahesh Gaikwad, Hrishikesh Patil, Rahul Khude and Manoj Gaikwad. Rahul Khude and Manoj Gaikwad have stated about the altercation which had ensued on 31st January, 2024 involving Mahesh Gaikwad and Ganpat Gaikwad (accused No. 1) at the property of Eknath Jadhav. They stated that, at that time, they overheard the associates of Ganpat Gaikwad (accused No. 1) stating that they had asked Ganpat Gaikwad (accused No. 1) to finish off Mahesh Gaikwad. Prima facie, the witnesses do not state that the applicant was present at the time of the said incident.

16. Shekhar Dhanve states about the presence of the applicant along with Vaibhav Gaikwad in front of the cabin of Senior PI at the time of alleged occurrence. One Nagesh allegedly threatened Shekhar Dhanve by making a gesture of shooting him. Hrishikesh

Patil, in his supplementary statement recorded on 20th March, 2024, states that Vaibhav Gaikwad instructed Harshal Kene to wait outside the cabin of Senior PI and enter the same after Ganpat Gaikwad (accused No. 1) fires, as per the plan. There is no reference to the applicant in the supplementary statement of Hrishikesh Patil.

17. Mahesh Gaikwad whose statement was recorded on 11th March, 2024, stated that on the night of occurrence while he and his associates were in precincts of Hill Line police station, he had heard Vaibhav Gaikwad and his associates, including the applicant, discussing about eliminating him. Qua the applicant, it is alleged he was one of those persons.

18. At this stage, even if the aforesaid statements are taken at par and the aspect of delay in recording their statements, which was sought to be urged on behalf of the applicant, is discounted, yet, prima facie these statements do not indicate that the applicant was overheard narrating or discussing the plan to kill Mahesh Gaikwad. He was not present when the incident 31st January, 2024 occurred. As noted above, a number of persons from both the groups had gathered in front of the police station and there was a huge commotion. The presence of the applicant along with Vaibhav Gaikwad in front of Hill Line police station, therefore, by itself,

cannot be a strong incriminating circumstance if considered in the light of the attendant circumstances.

19. With regard to the acts and conduct of the applicant inside the cabin, the images in CCTV footage, do indicate that the applicant came in and went out of the cabin on four occasions. Even after the incident, the applicant entered the cabin and met Ganpat Gaikwad (accused No. 1). The learned APP and Mr. Mohite laid emphasis on the fact that the nonchalant manner in which the applicant moved around after the occurrence betrays the knowledge on the part of the applicant. The manner in which persons react to a given situation cannot be predicted in a straight jacket. Different persons react to same incident in different manner, depending upon their life experience, frame of mind and capacity to withstand abnormal situations. Therefore, to draw an inference about the complicity of the applicant, on the basis of conduct of the applicant post occurrence, may be tenuous.

20. It is trite the criminal conspiracies are hatched in secrecy. There cannot be direct evidence of the meeting of minds or agreement between the conspirators. It has to be inferred from the circumstances which attended, preceded and followed the occurrence.

21. In the case of **Kehar Singh and Ors. vs. State (Delhi**

Administration)² it was enunciated that the gist of the offence of conspiracy lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.

22. In the case of **Yogesh Joshi** (supra), on which reliance was placed by Mr. Ponda, after adverting to the previous pronouncements, the essential ingredients of the offence of criminal conspiracy were exposted as under:-

25] Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

23. On the aforesaid touchstone, reverting to the case at hand, in the light of the facts adverted to above, prima facie, it appears debatable where the applicant was a conspirator in the conspiracy. The said question would warrant adjudication at the trial. The investigation is complete. The applicant has been in custody since

2 1988 (3) SCC 609.

7th February, 2024. The applicant appears to have roots to tie him down to his place of abode and avocation. In the circumstances of the case, especially having regard to the time and place of the occurrence and the persons involved, the possibility of tampering with evidence also seems remote. Further detention of the applicant as an under trial prisoner, thus, appears unwarranted. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Divyesh @ Vicky Lalitkumar Ganatra be released on bail in C.R. No. 171 of 2024 registered with Hill Line police station, on furnishing a P.R. Bond of Rs. 1,00,000/- (One Lakh) with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Hill Line police station on first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of

the case so as to dissuade him from disclosing such facts to Court or to any Police Officer.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] The applicant shall not leave India without prior permission of the trial Court.

8] 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 and the trial Court shall not be influenced by any of the observations made hereinabove.

9] Application disposed.

10] In view of above, Interim Application also stands disposed.

(N. J. JAMADAR, J.)

11] At this stage, Mr.Mohite, the learned Senior Advocate for the first informant submits that having regard to the fact that there are allegations of threatening of the witnesses and few of

the co-accused are yet absconding, the applicant be directed to stay out of the limits of Kalyan City.

12] The applicant shall not enter the limits of Kalyan City for a period of six months, except for the purpose of attending the Court or Police Station.

(N. J. JAMADAR, J.)