



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (BA) NO.196/2024

Harsh s/o Saudagar Bagade

..VS..

The State of Mah., thr. PSO PS Kondhali, District Nagpur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

**Shri Akshay Naik, Counsel with Shri C.R.Thakur, Advocate for the Applicant.
Ms.H.N.Prabhu, Additional Public Prosecutor for the Non-applicant/State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 10/07/2024

PRONOUNCED ON : 12/07/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant arrested on 28.7.2023 seeks regular bail in connection with Crime No.580/2023 registered with the non-applicant/police station for offences punishable under Sections 302, 201, and 120-B of the Indian Penal Code and 3/25 of the Arms Act. During investigation, offences were also registered under Section 404 of the Indian Penal Code and 7/25 of the Arms Act.

2. The crime is registered on the basis of report lodged by Assistant Police Inspector Raju Ramrao Raut attached to the Sitabuldi Police Station. As per allegations, on 25.7.2023, the applicant along

with co-accused took deceased Niralakumar Jaiprakash Sing and Ambarish Devdatta Gole to farmhouse at Ringnabodi-Shivar in field of co-accused Lucky Turkel and committed their murder by firing bullets by pistols and snatched Demand Draft of Rs.1,50,00,000/- from them. The applicant and other co-accused also attempted to burn dead bodies by pouring petrol and they thrown the said dead bodies in Wardha River.

3. On the basis of the said report, wheels of the investigation started rotating and the applicant was arrested.

4. Heard learned counsel Shri Akshay Naik with Shri C.R.Thakur for the applicant and learned Additional Public Prosecutor Ms.H.N.Prabhu for the State.

5. Learned counsel for the applicant submitted that the entire case is rested on circumstantial evidence. Prior to lodging of the report, wife of Niralakumar Singh filed a missing report stating that on 27.7.2023, her husband, left the house on a pretext of attending a meeting at Chitnavis Centre, Civil Lines, Nagpur and did not return back.

He submitted that similar report was also lodged against another deceased Ambarish Devdatta Gole.

He further submitted that insofar as the applicant is concerned, except seizure of footwear and CCTV Panchanama wherein the applicant was shown proceeding from Nagpur to Amravati Road, no other material is collected by the investigating agency. Thus, merely on a suspicion, the applicant is arrested.

He submitted that now, the investigation is already completed and chargesheet is already filed and, therefore, further incarceration of the applicant is not required.

6. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Criminal Appeal No.579/2019 (Balasaheb vs. State of Maharashtra, through Police Inspector) and other connected matters, reported in 2023 SCC OnLine Bom 2474, and

2. Mohd.Javed vs. State of Chhattisgarh, reported in AIR OnLine 2018 SC 1524.

He submitted that in the decision *supra* it is held that in absence of any corroborative evidence against accused persons, except call records, the accused persons are entitled to benefit of doubt.

7. Learned Additional Public Prosecutor for the State vehemently opposed the application on ground that the applicant

was member of conspiracy hatched by the applicant and the other co-accused. In pursuance of the said conspiracy, co-accused Omkar Talmale took both the deceased along with him and both the deceased were eliminated. She submitted that during investigation it revealed that co-accused Omkar Talmale was seen with the deceased. The CCTV Panchanama drawn by the investigating agency and statements of witnesses show that co-accused Omkar Talmale was seen with the deceased and, thereafter, the deceased were found dead.

As far as the applicant is concerned, the CCTV Footage, collected from H.P.Petrol Pump at Gondkhairi Toll Plaza, that on 25.7.2023, at about 20:13:53, a Hyundai i10 Car and a Bolero Car proceeded from Nagpur to Amravati. The Bolero Car was again seen on 26.7.2023 proceeding towards Nagpur at about 8:28:27 am. Said Hyundai i10 Car was followed by one Yamaha Motorcycle from Gondkhairi Toll Plaza towards Kondhali wherein co-accused Danesh Durgaprasad Shivpeth was seen proceeding and, thereafter, the applicant was also seen proceeding on the said way on his Honda Motorcycle. On the next day, he was again seen returning from Kondhali to Gondkhairi Toll Plaza Gondkhairi Toll Plaza towards Nagpur. CDRs collected during the investigation show continuous

calls between the applicant and other co-accused. There are total 76 calls received by the applicant from co-accused Harsh Verma on 26.7.2023. There are total 11 calls between the applicant and co-accused Lucky Turkel. There are calls between Danesh Shivpeth and the applicant between 4.6.2023 to 25.7.2023.

Thus, there are consistent calls between the applicant and the other co-accused.

During investigation, the investigation officer seized Mahindra Bolero Car bearing registration No.MH-31/EU/4846, Creta bearing registration No.MH-49/BW/1986. From both the vehicles blood stains are collected by the investigating agency. The Bolero Car was driven by Lucky Turkel and co-accused Harsh Verma travelled in the said car. It is further revealed during the investigation that the alleged incident occurred at a farmhouse of Lucky Turkel and the dead bodies were carried in both cars and thrown in Wardha River. Two pistols and ten cartridges were purchased from co-accused Abdul Manan.

Thus, involvement of the applicant as well as the co-accused is revealed from investigation papers.

Thus, considering *prima facie* material, the application

deserves to be rejected.

8. After hearing learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused investigation papers, it shows that the First Information Report is lodged by Assistant Police Inspector Raju Ramrao Raut attached to the Sitabuldi Police Station alleging that during investigation it revealed to him that the wife of Niralakumar Singh has lodged a missing report stating that her husband has left the house to attend a meeting on 25.7.2023 and did not returned back. During enquiry of the said missing report, they received information that both the deceased and co-accused Vishal Punj and Omkar Talmale are proceeding by i10 Car towards Rani Dhaba. At the same time, another missing report was also enquired and during investigation it revealed that the accused took both the deceased and eliminated them. It further revealed that co-accused Lucky Turkel owns his farmhouse at Ringnabodi wherein the deceased persons were taken by Omkar Talmale and Vishal Punj and, thereafter, Demand Draft of Rs.1,50,00,000/- was snatched from them and they were eliminated by Omkar Talmale by firing bullets. Thereafter, petrol was poured on the dead bodies and the same were set on fire. Both dead bodies were carried in a four-wheeler and thrown in Wardha River. During

the investigation, the Investigating Officer has drawn spot panchanama. The spot of the occurrence is situated at Ringnabodi at a farmhouse owned by Lucky Turkel.

9. The statements of one Sindrao Warthi and Manish Roy, recorded by the Investigating Officer, show that said Sindrao Warthi is working at the farmhouse of Sanjay Turkel. Said Sanjay Turkel constructed a bungalow and cattle shed and he is looking after the same. Occasionally, Lucky Turkel used to visit the same farmhouse and, therefore, he is acquainted with him. On 25.7.2023, at about 8:00 pm, Lucky Turkel along with his friends Danesh Shivpeth and Omkar Talmale came at the farmhouse, obtained key, and asked him to go home. The said statements are also substantiated by Manish Roy who is also staying and working adjacent to the said farmhouse.

10. During the investigation, personal search panchanamas of the accused are carried out. During the investigation, it further revealed that the applicant has burnt his clothes which were on his person on the day of the incident and purchased new clothes from the shop of one Krishna Narsingh Mundle. Insofar as presence of the applicant at the spot of the incident is concerned, the CCTV Footage Panchanama collected by the Investigating Officer from Gondkhairi Toll Plaza shows that on 25.7.2023, initially, one Hyundai Creta

bearing registration No.MH-49/BW/1986 owned by co-accused Vishal Punj proceeded from Nagpur to Amravati. The said car was followed by i10 car owned by Omkar Talmale and both cars were followed by one Yamaha Motorcycle of Danesh Shivpeth and Grey Colour Honda Motorcycle of the applicant. All these vehicles were again seen in the CCTV Footage returning on the same way on 26.7.2023 at about 8:29:25 towards Nagpur. The connection of the applicant is further revealed from CDRs showing that there were consistent calls between the applicant and other co-accused on 25.7.2023 to 26.7.2023.

11. The Investigating Officer, during the investigation, recorded memorandum statement of the applicant at whose instance the place where he burnt his clothes were recorded. A pair of footwear was also recovered. The Investigating Officer has also collected blood stains from seized vehicles and the same were forwarded to Chemical Analysis. From the spot, blood stains were collected. The blood stains were also collected from Hyundai i10 Car bearing registration No.MH-31/FA/5153.

12. Thus, insofar as involvement of the applicant is concerned, his connection with the co-accused by way of CDRs, CCTV Footage show that he followed the co-accused on his

Motorcycle and proceeded on 25.7.2023 from Gondkhairi Toll Plaza towards Kondhali and again returned back on 26.7.2023.

13. Thus, *prima facie* case is made out against the applicant to show his involvement in the crime.

14. At this stage, there is sufficient material to show the connection of the applicant with the alleged offence. At the same time, it is to be seen the manner in which two persons were eliminated by the applicant and the other co-accused so also gravity of the offence and punishment provided for the same. Though learned counsel for the applicant placed reliance on **Criminal Appeal No.579/2019 (Balasaheb vs. State of Maharashtra, through Police Inspector) and other connected matters** *supra* and submitted that circumstantial evidence is to be relied upon after establishing complete chain of circumstances, mere CDRs are not sufficient. However, the said observation is on the basis of the evidence recorded before the trial court. The Honourable Apex Court, in the decision in the case of **Mohd.Javed vs. State of Chhattisgarh** *supra*, also considered that except CDRs, there was no other evidence. Insofar as facts of the presence case are concerned, besides CDRs, the connection between the applicant and the other co-accused is established by the CCTV Footage as well as the other evidence in the

nature of statement of the applicant as to the discovery of facts.

15. Considering the material collected during the investigation, a *prima facie* case is made out against the applicant and, therefore, the application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!