



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

CRIMINAL APPLICATION (BA) NO.333 OF 2023

(Abhimanyu Arjun Dudhe Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.M. Daga, Advocate for the applicant.
Mr. A.S. Mardikar, Sr. Advocate a/b Mr. D.I.Jain, Advocate for Assist to prosecution.
Mr. N.H. Joshi, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 24, 2024

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure.

2. The applicant came to be arrested on 02/10/2022 in connection with Crime No.858/2022 registered at police station Darwha, District Yavatmal for the offence punishable under Sections 302, 307, 323, 336, 201, 120-B read with Section 34 of the Indian Penal Code, 1860 along with Sections 3, 25 and 27 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951.

3. The crime is registered on the basis of report lodged by Sau. Nanda Sudhakar Tote – mother of the deceased on an allegation that on 30/09/2022 at about 9.00 a.m. they went at Darwha from Murtizapur to attend the court proceeding. At about 11.00 a.m. they reached at Darwha and when they were proceeding towards Court,

one person by name Om Subhash Dudhe along with two unknown persons came in front of them and co-accused Om Subhash Dudhe pointed out the Gun towards her son and fired one shot towards her son. Said shot hit her son and he sustained grievous injury. She attempted to rescue her son but she could not. As her son sustained grievous injuries and taken to the hospital but he reported to be dead by Medical Officer. On basis of said report, the crime is registered against the said Om Dudhe and two unknown persons. During investigation, the role of the present applicant according to the prosecution is revealed as he was a member to the criminal conspiracy hatched to eliminate the deceased and therefore, he is implicated in the alleged crime.

4. Learned Counsel for the applicant submitted that as far as the present applicant is concerned, the role attributed to him is similar to the Amol Devidas Nimkar and Akshay Dipak Lande who are already released on bail by this Court. He further submitted that the circumstances on which the prosecution are relied upon that is the statement of the co-accused which is not admissible. He submitted that the another circumstance on which the prosecution relied upon is the CDR report which is not sufficient to connect the present applicant with the alleged offence. He also invited my attention towards the observation made by this Court while considering the bail application of the co-accused Akshay Dipak Lande in ***Criminal Application (BA) No.73/2023*** wherein this Court

has held that the Investigating Officer has collected CDR details to show that the applicant and accused No.1 were in contact with each other. The evidence will be hardly of any assistance. The call data record will only indicate that there were phone calls between the two mobile numbers. He further submitted that if the statement of one Nikhil Uttamrao Dudhe even if taken into considerations which only shows that he has assisted the co-accused to elope from the place of incident and no other role is attributed to the present applicant. In view of that, on the ground of parity, present applicant deserves to be released on bail. In support of his contention he placed reliance on the order of the Honourable Apex Court in ***Maniklal Mehta Vs. The State of Bihar in Special Leave to Appeal (Crl.) No.3490/2023 dated 16/05/2023*** wherein the Honourable Apex Court held that the record shows that the charge sheet has been filed. The role attributed to the petitioner is that he is one of the conspirators and was in constant communication with one Vikram Mehta. The charge sheet relies primarily upon telephonic conversation and some quarrel which took place prior to the incident. Besides. The charge sheet has been filed and the trial is under way. Considering all these aspects and taking into account totality of the allegations against him, this court is of the opinion that the petitioner deserves to be enlarged on bail.

5. On the basis of the above submissions he submitted that the similar of the facts of the present case

only CDR report will not be helpful to the prosecution to connect the present applicant with the alleged offence and prays for releasing the present applicant on bail.

6. Learned Additional Public Prosecutor strongly opposed the application on the ground that the investigation papers reveals that the present applicant was a party to the conspiracy since inception and his role revealed during the investigation carried out by the Investigation Officer. The another circumstance on which the prosecution is relied upon is the statement of the Nikhil Uttamrao Dudhe shows the involvement of the present applicant as well as memorandum statement of Dnyaneshwar from whom the amount of Rs.1,50,000/- is seized. He submitted that before the present applicant who has paid said amount to the co-accused who has eliminated the deceased. In view of that the application deserves to be rejected.

7. Learned Senior Counsel for the original complainant opposed the application and pointed out from the summary of the charge-sheet that the role of the present applicant reveals from the summary of the charge-sheet wherein it is specifically mentioned that the applicant has not only assisted the co-accused but he was from inception involved in the plan of eliminating the deceased. Accordingly, he has paid Rs.1,50,000/- to the co-accused Dnyaneshwar @ Nana Mohture. He further pointed out from the account statement that the amount

of Rs.2,00,000/- was transferred in the account of the present applicant through the account of M/s. Dudhe and Company. The joint holder of the said account was Om Dudhe. He submitted that the amount was paid to the co-accused by the present applicant. There is constant communication between the present applicant and other co-accused. He pointed out towards the CDR report which shows that mobile No.8888662522 is of present applicant Abhimanyu Dudhe. From the CDR report it reveals that there was a first call from the mobile phone of the present applicant to the mobile phone of Shailesh on 30/09/2022 i.e. accused No.2 at about 04:04:20 and second call to Om Dudhe i.e. co-accused at about 06:02:58, third call on 30/09/2022 again to co-accused Om and another call again to Shailesh on 11:19:42 and the last call is on 30/09/2022 to the Nikhil at about 12:17:50. Thus, the CDR report shows that there was a constant communication between the present applicant with the co-accused. The alleged incident has taken place when the deceased was proceeding for the Court proceeding at about 11 a.m. and the present applicant has made a phone call to the co-accused Om after the incident immediately. Thus, the material which is collected during the investigation to show the involvement of the present applicant is sufficient at this stage. Now the trial is already commenced, if the applicant/accused is released on bail there is apprehension of tampering of the witnesses. He further pointed out that on 24/12/2018 i.e. previous to

this incident also the applicant has attempted to eliminate the family members of the deceased and the complaint was lodged at Darwha police station against the present applicant and other co-accused. Considering the previous enmity between the present applicant and the deceased, the circumstances showing his connection with the other accused, *prima facie* case is made out. In view of that, the application deserves to be rejected.

8. Having heard learned Counsel for the parties. Perused the investigation papers. From the investigation papers it reveals that the statement of one Nikhil Dudhe was recorded which shows that he has received the phone call of Shailesh Vinod Badukule who is the accused No.2. He has handed over the said phone to the present applicant for communication with Shailesh. The present applicant asked said Nikhil to bring the co-accused Shailesh Badukale at Yavatmal but he denied for the same. To show the involvement of the present applicant, the prosecution further relied upon on the panchnama which shows that from the co-accused Dnyaneshwar the amount of Rs.1,50,000/- is recovered on the basis of his memorandum statement. The account statement also shows that prior to the incident on 04/08/2022 i.e. one month prior to the incident the amount of Rs.2,00,000/- was transferred to the account of the present applicant from the account of M/s. Dudhe and Dudhe Company and co-accused Om Dudhe is one of the joint holder of the said account. The CDR report shows there was a constant

contact from the mobile phone of the present applicant to the other co-accused i.e. since early morning till 12 O'clock in the afternoon. The alleged incident has occurred at about 11.00 a.m. Thus, considering the material collected during the investigation by the prosecution shows that the present applicant who is also relative of the co-accused is involved and *prima facie* case is made out against him to show his involvement in the conspiracy. If there would have been only record of the telephonic call then it would have been a different thing. Besides the telephonic call, the material that the statement of one Shailesh showing that the present applicant was in contact with the co-accused i.e. Shailesh. The CDR report also shows that on time to time on the day of incident he has communicated with the other co-accused. The amount transferred to his account are sufficient to attract the *prima facie* case against him. Admittedly, direct evidence would not be available to show the involvement of the present applicant in the conspiracy. The essential ingredients of Criminal Conspiracy are (i) an agreement between two or more persons; (ii) agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an

offence. The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Honourable Apex Court in the case of ***Gulam Sarbar Vs. State of Bihar [2014 (3) SCC 401]*** observed that criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them between the parties. By referring the judgment of ***Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh & Anr. Vs CBI, [(2008) 15 SCC 49]***, it is held that in order to come under this provision it is not necessary for the accused to know the detailed stages of conspiracy; mere knowledge of main object/ purpose of the conspiracy would suffice for this Section. In ***Vikram Singh & Ors. Vs. State of Punjab, [AIR 2010 SC 1007]***, the Apex Court has dealt with a case where the accused had purchased fortwin injection and chloroform. Thus, it was held that since the purchase of these materials was an

initial step towards commission of offence, the presence of co-accused though not referred to by the witnesses at the time of actual kidnapping would not imply that she was not privy to conspiracy and conviction of the accused under Section 120-B IPC was upheld.

9. In the light of the above well settled principles laid down by the Honourable Apex Court, considering the various circumstances pointed out by the learned Additional Public Prosecutor and learned Senior Counsel, *prima facie* case is made out against the present applicant and now trial is already commenced and fix for recording the evidence. It is not a fit case wherein the discretion can be used in favour of the present applicant. It is well settled that by considering the application for grant of bail the parameters which Court has to consider are the gravity of the offence and the nature of the accusation made against the accused, the punishment provided and apprehension of fleeing away from the justice. If these parameters are applied to the present case, admittedly it is not a fit case to grant bail by using the discretion. In view of that, the application deserves to be rejected.

10. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)