

Ajay

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

CRIMINAL BAIL APPLICATION NO. 4918 OF 2024

Gaurav Kumar Vilas Yadav

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Shubham Upadhyay a/w. Mr. Arya Kotwal, Mr. Dhiraj Upadhyay, Advocates for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent – State.
 - Mr. Rohan Patil, API, Nerul Police Station, Navi Mumbai present.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025.

P.C.:

1. Heard Mr. Upadhyay, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.126 of 2023 registered with Nerul Police Station for the offences punishable under Sections 302 and 120-B read with 34 of the Indian Penal Code, 1860 (for short '**IPC**'). Sections 3, 4, 25 and 27 of the Indian Arms Act, 1959 and Sections 37(1) and 135 of the Maharashtra Police Act, 1951. In the present crime, Applicant is arraigned as Accused No.4.

3. Case of the prosecution as against present Applicant is that he has kept a watch on the movement of the deceased victim who was targeted by main principal absconding Accused No.7 cousin brother of deceased victim due to an enmity with respect to the property and business emanating right from their native place.

4. At the outset, Mr. Upadhyay, learned Advocate has drawn my attention to the order dated 01.08.2024 passed in Bail Application No.378 of 2024 appended at page No.505 of the present Bail Application, *inter alia*, granting bail to Accused Nos.1 and 5 in the present crime. He would submit that in so far as role of present Applicant is concerned, it is far much less than what this Court has considered while enlarging Accused Nos.1 and 5 on bail. At the highest, he would submit that case of prosecution as made out from the record is about presence of Applicant two days prior to the date and time of incident and case of the prosecution against Applicant is that he was employed by other Accused persons to keep a watch and report to the other Accused persons about movement of the victim.

5. Admittedly, according to prosecution case Applicant was not present at the time when the incident took place. The incident took place on a public road ahead of the bungalow residence of the victim in Nerul, Navi Mumbai.

6. Ms. Yadav, learned APP appearing for Respondent – State would persuade the Court to consider the prosecution case as emanating from the record to highlight the role of Applicant. She would submit that one witness has recorded his statement on 25.04.2023 and as per his statement Applicant's complicity in the present crime is he being one of the conspirators alongwith principal present Accused No.7. *Prima facie* when the said statement is read, it is seen that the said statement is recorded on 25.04.2023 which is more than 40 days after the date of incident and therefore considering the fact that it is recorded belatedly it does not inspire confidence of the Court primarily because there is no other corroborative material placed in the prosecution case to enable the Court to consider submission made by the learned Prosecutor.

7. Next she has drawn my attention to the CCTV footage and the description of which is given at page No.193 of the Application and would submit that if the concerned photographs appended at page Nos.207 and 208 are seen, Applicant is seen in the frame at a distance arriving from a taxi. When the said photographs are seen, *prima facie* it is seen that there are 5 persons in the frame including ladies standing at three different places.

7.1. According to learned prosecutor, Applicant is standing next to the taxi driver and probably conversing with him which does not

justify the submission which is made by the learned prosecutor. Learned Prosecutor has also persuaded me to consider the fact that the CDR record appended at page Nos.494 and 495 of the Application be considered by Court to consider complicity of Applicant as he was in constant touch with the other Accused persons involved in the present crime. *Prima facie* when the said material is seen, it is prosecution's own case that Applicant had made 3 calls on 10.03.2023, 7 calls on 11.03.2023, 1 call on 12.03.2023, 6 calls on 13.03.2023, 1 call on 14.03.2023 and 11 calls on 15.03.2023 during the period immediately preceding the date and time in question. However what calls were made and what was the live link between the callers is not established by prosecution to enable the Court to consider the complicity of the Applicant in the present crime *prima facie*.

8. In that view of the matter, with no actual and specific role being assigned to Applicant before me as also the fact that Applicant was not present on the spot of crime at the relevant time and the case of prosecution *prima facie* itself being based on a photograph appended at page No.208 of the Application to contend that Applicant was present 2 days prior at the scene of crime on a public road in the area does not inspire confidence of the Court at this stage, neither motive of Applicant has been *prima facie* established, *inter alia*, with respect to any pecuniary gain having been received by him.

9. The most important fact is that TI parade was conducted 2 and ½ months after the date of incident in which Applicant has been identified. *Prima facie* it does not rule out the fact that Applicant's photograph was already appended onto the FIR / the Court Arrest Form in the police station and therefore the said TI parade cannot be conclusive evidence at this *prima facie* stage, unless complicity of the Applicant is established in trial.

10. In view of the above *prima facie* observations, findings and considering the specific role of Applicant in the present case, I am of the opinion that Applicant can be released on bail.

11. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.10,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and/or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) In case of any infraction of the above conditions and/or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

12. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the

strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

13. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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