

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4992 OF 2024

1. Sandip Anant Sarvankar

2. Ranjit Vinayak Yadav

...Applicants

vs.

The State of Maharashtra

...Respondent

Mr. Sudeep Pasbola, Senior Advocate a/w. Mr. Rahul Arote, for the Applicants.

Mr. Ashish Chavan, Spl. P.P. a/w. Mr. Mayur Mohite and Mr. Priyesh More, for Respondent/State.

Mr. Kasim Sheikh a/w. Mr. Devidas Bhoir and Ms. Ashwini Mhatre, for the Intervener.

CORAM

: N. J. JAMADAR, J.

DATE

: JANUARY 13, 2025

P.C.:

1. The applicants, who are 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, seek 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) was a member of the Maharashtra Legislative Assembly. 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). On 31st January, 2024 and 1st February, 2024 there were altercations between Mahesh Gaikwad and Ganpat Gaikwad (accused No. 1).

3. 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 Vicky Ganatra (accused No. 4) 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. As the commotion escalated, Senior PI Jagtap came out of the cabin.

4. 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. 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. The applicant No. 1 Sandip Sarvankar (accused No. 3), attempted to assault Shekhar Dhanve, the bodyguard of a Mahesh Gaikwad, by means of chair. Applicant No. 2 Ranjit Yadav (accused No. 5) also joined in the assault and slapped the first informant.

5. 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 applicants had entered into the cabin after hearing the gun shot, pursuant to the said criminal conspiracy. The applicants were the members of the unlawful assembly in prosecution of the common object of which the offences were committed.

6. Mr. Pasbola, the learned Senior Advocate for the applicants, submitted that the applicants cannot be attributed the role of being the conspirators, nor the applicants can be said to be the members of the unlawful assembly in prosecution of common object of which the offences were allegedly committed. The material on record indicates that there was nobody except Ganpat Gaikwad (accused No.1), Mahesh Gaikwad, Rahul Patil and Chainu Jadhav (the first informant) when Ganpat Gaikwad (accused No.1) suddenly opened fire. The applicants had rushed into the cabin after hearing the gun shot along with others. The transcript of CCTV footages clearly

indicates that there was a fight between the members of the both the groups. The acts on the part of the applicants can, at best, be said to prevent the member of the informant party from assaulting the members of the accused party. However, the intent to commit murder of the first informant and Rahul Patil, cannot be attributed to the applicants.

7. Mr. Ashish Chavan, the learned special PP for the State, submitted that there is material to indicate that immediately after entering the cabin, the applicants started to assault the members of the informant party. Attention of the Court was invited to the supplementary statement of the first informant to the effect that Ranjit Yadav, the applicant No. 2(accused No. 5), slapped him while he was attempting to get out of the cabin of the Senior PI. Likewise, Sandip Sarvankar, the applicant No. 1(accused No. 3), had attempted to assault Shekhar Dhanve, the bodyguard of Mahesh Gaikwad, by means of chair. If the immediate action of the applicants to assault the members of the informant party no sooner they entered the cabin of Senior PI is considered in the totality of the circumstances, according to the Mr. Chavan, it becomes evident that the applicants either shared common object of the unlawful assembly or knew that the offences were likely to be committed in prosecution of the common object of the unlawful assembly.

Reliance was placed on the decision of the Supreme Court in the case of **Nitya Nand vs. State of U.P. and Anr.**¹

8. Mr. Sheikh, the learned counsel for the intervener, supplemented the submissions of Mr. Chavan. Mr. Sheikh urged that the applicants prevented Shekhar Dhanve, the bodyguard of the victim, from saving the victims from the murderous assault by Ganpat Gaikwad (accused No. 1) and Harshal Kene (accused No. 2). Mr. Sheikh also placed reliance on the decision in the case of **Nitya Nand** (supra).

9. At the outset, it is necessary to note that by an order dated 4th October, 2024 this Court has enlarged Divyesh @ Vicky Ganatra (accused No. 4) on bail, observing, inter alia, as under:-

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**

1 Supreme Court Cri.Appeal No.1348/2014 Dt. 04/09/2024.

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 expounded 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 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.

10. Indeed there is a difference in the role attributed to Divyesh @ Vicky (accused No. 4). No overt act was attributed to Divyesh @ Vicky (accused No. 4). He was allegedly present in the cabin of Senior PI and had instigated Ganpat Gaikwad (accused No. 1) by words and gestures before the latter fired at the victims. Whereas,

2 1988 (3) SCC 609.

the applicants entered the cabin of Senior P.I. after Ganpat Gaikwad (accused No. 1) fired at the victims.

11. Prima facie, it appears that the applicants along with police personnel and the bodyguard of Mahesh Gaikwad entered into the cabin after hearing gun shots. It also appears that a fight ensued in the cabin between the members of the rival groups. Evidently, the applicants did not assault Mahesh Gaikwad or Rahul Patil, the victims. They were engaged with the other members of the informant party. It was virtually a free fight between the members of both the groups. In such circumstances, whether the applicants shared the common object of the unlawful assembly, in the peculiar facts of the case, appears to be a matter for adjudication at the trial.

12. The applicants Sandip Sarvankar and Ranjit Yadav have been in custody since 3rd February, 2024 and 10th February, 2024 respectively. The investigation is complete. The applicants appear to have roots in society. 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 applicants as under trial prisoners, thus, appear unwarranted. I am, therefore, persuaded to exercise the discretion in favour of the applicants.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicants No.1 Sandip Anant Sarvankar and No. 2 Ranjit Vinayak Yadav 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) each with one or more sureties in the like amount, each.
- 3] The applicants shall mark their 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 applicants 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 applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.
- 6] The applicants shall regularly attend the proceedings before the jurisdictional Court.
- 7] The applicants shall not leave India without prior permission

of the trial Court.

8] The applicants 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.

9] 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.

Application disposed.

(N. J. JAMADAR, J.)