
(2013) 10 BOM CK 0262

In the Bombay High Court

Case No : Cri. Bail Appln. No. 1450 of 2013 and Cri. Appln. No. 679 of 2013

Udaysinh Vilasrao Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2015) 1 MhLJCrI 621

Hon'ble Judges : U. V. Bakre, J.

Bench : Single Bench

Advocate : A. P. Mundargi, Senior Advocate along with S. R. Borulkar instructed by Vinayak R. Patil, Advocates, for the Applicant; Mrs. A. S. Pai, APP, for the Respondent-State; Subhash Jha along with Rishabh H. Vakharia, Advocates, for the Intervenor

Final Decision : Disposed Off

Judgement

U. V. Bakre, J.—Heard learned counsel for the respective parties.

2. The applicant, who is accused No. 11, in Sessions Case No. 180 of 2009 and Sessions Case No. 109 of 2013, arising out of Cr. No. I-19 of 2009 of Karad City Police Station, for the offences punishable under sections 302, 307, 201, 212, 120-B, read with 34 of the Indian Penal Code; sections 3(25) and 5(27) of the Arms Act, and sections 56/142 of the Mumbai Police Act, has filed the present application for bail.

3. On 15-1-2009, at about 3.30 p.m., in front of Shivdarshan Hotel, situated in D. M. Complex, at Malkapur, Satara, two unknown boys fired 10 to 12 rounds from pistols at Sanjay Patil and ran away by a black coloured Motorcycle. Sanjay Patil died on the same day at about 6.00 p.m..

4. There is no dispute that there is strong prima-facie evidence against the accused Nos. 1 and 2 namely Sagar Parmar and Hamid Shaikh, who are still in custody, to establish that they are the said shooters who killed Sanjay.

5. The allegation against the present applicant is that he is the prime accused for having hatched the conspiracy to commit murder of Sanjay Patil. It is true that initially the applicant was not an accused person in Sessions Case No. 180/2009. Charges were framed against accused Nos. 1 to 9 and 16 witnesses were examined. Subsequently, further investigation was carried out under section 173(8) of Criminal Procedure Code after which present applicant and one Shankar Vasant Shevale came to be added as accused persons. Prima facie considering the reasonable possibility of power and influence which the applicant could have due to the fact that the applicant is the son of local MLA namely Shri Vilasrao Patil who was the Law Minister of the State of Maharashtra, and who has been the MLA from Karad (South) constituency for the last 35 years; the fact that the applicant himself is an advocate and a director of Rayat Sugar factory and a founder member of Koyna Co-op. Bank Ltd. and the fact that the Investigating Officer namely Sambhaji Achyutrao Patil, was himself found to be one of the conspirators and thus was made an accused and arrested in the case, I am not inclined to give, at this stage, any benefit to the applicant on the ground of his being belatedly included in the case, as an accused.

6. There is ample evidence on record to establish that the father of the applicant was in control of the Karad Agricultural Marketing Committee for more than 30 years till December 2008. In the election which took place on 25-12-2008, for the said marketing committee, the applicant had actively participated in the campaign in support of his father's panel. However, for the first time, the panel headed by Shri Vilasrao Patil, the father of the applicant, was defeated by the panel of the deceased Sanjay Patil. It is true, as pointed out by learned Counsel for the applicant, that the brother of the deceased namely, Dhananjay Patil, in his statements dated 16-1-2009 and 19-1-2009, did not state that the above defeat was the motive for the incident. But, the fact remains that subsequently, in his further supplementary statement dated 24-1-2009, Dhananjay has specifically stated that since in the election of the agricultural marketing committee, the ruling panel of MLA Vilasrao Patil was defeated by the panel of his brother Sanjay Patil, the applicant and his cousin Anandrao Patil engaged Sagar Parmar, Salim Shaikh alias Sallya Chepya and his associates and gave them "supari" to kill his brother Sanjay and ultimately killed him. Since it is a fact which cannot be denied that the panel of the father of the applicant was defeated after many years by the panel of the deceased, thereby putting an end to the control of Shri Vilasrao Patil and his son, the applicant, over the affairs of the said marketing committee, there is reasonable ground to prima facie hold that this is motive for the applicant to take revenge and eliminate the deceased in order to re-capture the control over the said marketing committee.

7. As pointed out by the learned APP, there is on record a statement of Shri Fattulal Nayakwadi, a police officer, to the effect that the deceased who was a wrestler, was arrested under the provisions of MCOC Act and on account of the death of Tukaram Patil, the father of the deceased, the deceased was permitted to attend the funeral of his father and Fattulal was on bandobast duty at the

place of funeral. At that time the deceased Sanjay had told Fattulal that he was falsely implicated in the Crime under MCOC Act, by MLA Vilaskaka and that he would not leave Vilaskaka after coming out of the jail. This was recorded by Fattulal in the confidential records so that proper care could be taken in future for protection of Vilaskaka. The above according to the learned Counsel for the applicant is motive for the deceased Sanjay to take revenge against the father of the applicant. I am not inclined to agree with the above. No doubt the above was motive for the deceased but at the same time since there was fear for the father of the applicant from Sanjay Patil, there was motive also for the applicant.

8. Dhananjay, the brother of the deceased, in his last statement dated 24-12-2012, stated that since the control over marketing committee, which was with Vilasrao Patil and present applicant for more than 30 years was lost, and further since Sanjay Patil had thrown their photographs on ground and had broken them and had abused Vilasrao, the applicant was angry and because of that he conspired with others and gave supari and killed Sanjay Patil. Same thing has been stated by Smt. Shubhangi Sanjay Patil in her supplementary statement dated 24-12-2012. It was pointed out by learned Counsel for the applicant that in their previous statements, Dhananjay Patil and said Shubhangi Patil had not stated about the breaking of photographs or watch. He also pointed out that though Manoj Pawar, Vithal Patil, Mahadev Garud, Bhimrao Kanase, Digvijay Patil and Avinash have all stated about the incident of breaking of photograph and watch, by deceased Sanjay Patil, however, none of them stated that this was the cause for murder of Sanjay. According to him, the statements dated 24-12-2012 have been manipulated in order to falsely implicated the applicant. Whatever it may be, the fact that the photographs of Vilasrao and applicant were removed and thrown down and broken by the deceased was stated even earlier, by some witnesses. The evidential value to be given to the statements of witnesses will be seen on merits. In my view, prima facie, motive for the applicant to enter into a conspiracy to kill Sanjay Patil has been established.

9. The statements of various witnesses namely jaiwant Jagtap, Sujay Jagtap, Jagdish Patil, Rahul Nikam, Hanumant Shinde, Jyotirao Patil, Shubhash Bhosle, Macchindra Doiphode, Tanaji Jadhav, Nandkumar Kulkarni, Pradeep Kadam and Shrirang Shinde, reveal that on 25-12-2008 i.e. on the date of election, the accused No. 1 namely Sagar Parmar and two boys were continuously with the applicant from 11.00 a.m. to 2.00 p.m. and they all left along with the applicant by his car. Several witnesses named above have identified the accused Nos. 1 and 2 namely Sagar Parmar and Hamid Shaikh as the two persons who were with the applicant on that day. Then on 12-1-2009, Mr. Ankush Pisal had seen the applicant along with Sallya Chepya(Salim Shaikh), Sagar Parmar, and other unknown persons talking to each other inside the gate of Rayat Sugar Factory and after that they all went to Koyna Co-op. Bank. Mr. Sambhaji Thorat saw the applicant with Baba More, Sallya Chepya, Sagar Parmar, Sambhaji Patil(all co-accused) and five others going to Koyna Co-op Bank, on 12-1-2009. According to Hanumant Shinde, the police subinspector, on 25-12-2008, the applicant met

him and told him that he is the son of Vilasrao Patil and that Sagar Parmar and Hamid Shaikh(main shooters) were his body guards. It is the contention of learned Counsel for the applicant that the applicant being a politician, is bound to move with his supporters and that there is nothing suspicious about that which was done openly. He further submitted that admittedly no conspiracy was hatched on 25-12-2008 when results of the election were not known. Learned Senior Counsel relied upon State of U. P. v. Dr. Sanjay Singh and anr., 1994 Supp. (2) SCC 707, wherein the Apex Court has observed that mere suspicion of motive cannot serve as a sufficient ground for framing of the charges in the absence of any material, prima facie showing that the particular motive has passed into action and that the accused is connected with that action in question. The above observation was made by the Apex Court in the Special Leave Petition against the Order of Allahabad High Court in Criminal Revision Application dismissing the revision and affirming the order of the Sessions Judge made in Sessions Trial No. 293/1989 discharging the respondents No. 1 and 2 who were accused Nos. 1 and 2 before the trial Court. The above observation has not been made in a bail application. In that case, the trial Court had found that the prosecution had failed to make out a prima facie case of motive on the part of the accused Nos. 1 and 2 or either of them to liquidate Modi. In the present case, there is strong prima facie case of motive, made out. Further, there is great force in the argument of learned APP that the accused Nos. 1 and 2 had no personal reason for killing the deceased whereas the applicant had the reason to do that and therefore the association of the applicant with accused Nos. 1 and 2 who were continuously with the applicant between 11.00 a.m. to 3.00 p.m. on the day of election i. e. 25-12-2008 and again on 12-1- 2009, in my considered opinion, prima facie, establishes the involvement of the applicant in this crime.

10. Then, there are other additional circumstances, pointed out by the learned APP, which lend support to the prosecution case. The black Pulsar Bajaj Motorcycle, allegedly used by the shooters, was found partly in water below the bridge at Wakurde Tunnel. Mr. Vaibhav Patil had seen the co-accused Shankar Vasant Shevale taking out the said motorcycle from the gate of Rayat Sugar Factory on 16-1-2009. At the instance of the accused Nos. 1 and 2 some weapons were recovered from a spot very close to the same Rayat Sugar Factory. The applicant was the director of the said Rayat Sugar factory. Then there are some call details of calls between the mobile of the applicant and that of the co accused Sambhaji Patil. There is allegation that there were calls between the applicant and some other accused also namely Salim Shaikh, Babaso More and Ashpak Sande. A licensed Pistol has been attached from the possession of the applicant along with live cartridges numbering more than the number which the applicant could legally possess. There is no explanation from the applicant as to why he had with him illegal cartridges.

11. Learned APP has submitted that the witnesses namely Santosh Deshmukh and Pramod Sarjerao are missing. She pointed out to some evidence which shows that the relatives of the accused are keeping watch on the police during

investigation and have been causing hindrance. She pointed out that during the house search panchanama of the accused, Ex-MLA Shri Shambhuraje Dessai had remained present in the said house.

12. Mr. Jha, learned Counsel appearing on behalf of the intervenor, pointed out that the applicant had previously filed Criminal Bail Application No. 383/2013 before this Court and that the matter was argued at length, on merits and when it was indicated by this Court that the Court is not inclined to grant bail to the applicant, the applicant chose to withdraw the said application. He further pointed out that thereafter the applicant again filed Criminal Bail Application No. 1035 of 2013 on the ground that by order dated 20-5-2013, this Court released one of the accused in this case on bail and that the case of the present application is at least on par with that of the said co-accused. The applicant withdrew the said bail application with liberty to apply for bail before the Court of Session. Learned Counsel for the intervenor further submitted that the applicant then approached the Sessions Court for bail on the ground that other accused who are alleged to be participated in the conspiracy are released on bail and recently, the accused No. 12, Shankar Vasant Shevale has also been released on bail. The learned Sessions Judge, by order dated 25-7-2013, held that the case of the present applicant is not at par with that of Shankar Shevale. He held that the applicant is the master mind of the entire incident and there is every possibility of tampering with evidence, taking into account the political influence of the applicant. The bail application came to be dismissed. In view of the above, according to the learned Counsel for the intervenor, it is not open to the applicant to claim bail on the ground that there is no prima facie case and that the applicant can only claim bail on the ground of parity, or any other changed circumstance, if it is available. Learned Counsel appearing on behalf of the intervenor relied upon following judgments :

- (i) Shahzad Hasan Khan v. Ishtiaq Hasan Khan and anr., (1987)2 SCC 684.
- (ii) State of Maharashtra v. Captain Buddhikota Subha Rao, (1989) Supp (2) SCC 605
- (iii) Harjeet Singh v. State of Punjab and anr., (2002) 1 SCC 649.
- (iv) M. Jagan Mohan Rao v. P. V. Mohan Rao and anr. [(2010) 15 SCC 491].
- (v) State of M. P. v. Kajad, (2001) 7 SCC 673.
- (vi) Ram Govind Upadhyay v. Sudarshan Singh and ors., (2002) 3 SCC 598.
- (vii) Kalyan Chandra Sarkar v. Rajesh Rajanand anr., (2004) 7 SCC 528.
- (viii) State of U. P. v. Amarmani Tripathi, (2005) 8 SCC 21.
- (ix) Sarguja Transport Service v. State Transport Appellate Tribunal, M. P. and anr., (1987) 1 SCC 5.
- (x) Chain Singh Dhakad v. Hargovind, (1991) Cr.L.J. 33.

13. In the case of Shazad Hasan Khan (supra), the Apex Court has observed that where earlier bail applications of the accused have been already rejected by a Judge of the High Court, subsequent application should be also placed before the same Judge, if he is available for orders. In the present case the Judge who had earlier passed orders is not now available, here. In the case of Kajad(supra), the Apex Court has held that after rejection of first bail application, second bail application is permissible only if it is under changed circumstances. In the case of Captain Buddhikota Subha Rao (supra), the successive bail applications were rejected on merits. The Apex Court has observed that once that application was rejected, there was no question of granting a similar prayer. That would virtually amount to overruling the earlier decision without there being a change in fact-situation. It has been held that change in fact-situation means a substantial change which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. In the cases of Ram Govind Upadhyay, Kalyan Chandra Sarkar and Amarmani Tripathi (supra), the relevant considerations for grant of bail are stated.

14. Considering the previous orders of this Court, and the principles laid down by the Hon"ble Supreme Court in the cases above, there is great force in the contention of the learned Counsel for the intervenor. The present applicant had initially filed the application for anticipatory bail before the Sessions Court, Satara. By order dated 30-1-2013, the same was rejected. The applicant came to be arrested on 30-1-2013, in the premises of Sessions Court Satara, soon after the rejection of the pre-arrest bail application. On 13-3-2013, the applicant applied for regular bail before the Sessions Court. BY order dated 13-3-2013, the said application was rejected. After the charge-sheet waBA 450 of 2013s filed against him and accused No. 12, the applicant again filed Criminal Bail Application No. 383/2013, before this Court. The same was withdrawn by the applicant after it was heard on merits and when it was indicated that the Court is not inclined to grant bail to the applicant. Liberty was, however, granted to the applicant to apply afresh for bail if the trial is not expeditiously held. Prior to the order dated 30-4-2013, passed in Cr. B. A. No. 383/2013, 16 witnesses were examined by the trial Court. No doubt, there was no further trial after the filing of the supplementary charge-sheet. The fact remains that the advocates were on strike due to which trial could not be taken. Learned APP, under instructions from the police officer present in the Court, has submitted that now the strike having been called off, the trial would be conducted as from 30-10-2013. The applicant filed another bail application No. 1035/2013 before this Court on the ground of change in circumstances namely that one of the co-accused was released on bail by the trial Court, by order dated 20-5-2013. BY order dated 11-7-2013, the applicant was allowed to withdraw the application with liberty to apply for bail before the trial Court. The applicant approached the trial Court for bail mainly on the ground that recently the accused No. 12 Shankar Vasant Shevale has been released on bail. The learned Additional Sessions Judge considered the application on merits and dismissed the same by order dated 25-7-2013.

Immediately, in August, 2013, the applicant has filed the present bail application. The applicant therefore cannot be permitted to say that there is no prima facie case against him. He has to rely upon only the changed circumstances, if any. Be that as it may, this Court has, other wise, considered the question of prima facie evidence, also.

15. It is true that the accused Nos. 3, 4, 5, 7, 8, 9 and 12 namely: Salim Shaikh, Lazem Hodekar, Babaso More, S. K. Patil, Sachin Chavan, Mudassar Momin, and Shankar Shevale have all been released on bail. Accused No. 3 is alleged to have given contract to accused Nos. 1 and 2. Accused No. 4 is alleged to have stayed in a hotel in the company of Salim Shaikh on 9th and 10th of February 2009 and in the company of other co-accused in Aditi lodge on 11th and 12th of February 2009. Accused No. 5 is alleged to be the person at whose instance the pistol was recovered and that he had given training of shooting to accused Nos. 1 and 2. Accused No. 7 is alleged to have given Rs. 2,00,000/- to the accused No. 3. Accused No. 8 is alleged to be the owner of the vehicle used by co-accused in the election and he is also alleged to be present with co-accused on 14-1-2009 in the garage of accused No. 10. Accused No. 9 is alleged to have helped Salim Shaikh to flee in his car. Accused No. 10 is the owner of that garage where allegedly some conspiracy was hatched. Accused No. 12 was originally a witness but subsequently arraigned as an accused and arrested and allegation against him is that he had screened the evidence that is the Motorcycle used in the commission of the offence. It was pointed out that the previous Investigating Officer, made as accused No. 13 has also been released on bail.

16. The case of the present applicant cannot be taken to be at par with that of any other accused. The present applicant is the main accused. Prima facie, if he had not wanted that Sanjay Patil should be killed, then there would not have been the incident of shooting Sanjay to death. Being an influential politician, from an influential family, there is force in the apprehension of the prosecution that if the applicant is released on bail, he would tamper with the evidence and the witnesses would not come forward to depose against him. In all the circumstances above, I am not inclined to grant bail to the applicant.

17. In the result, the Criminal Bail Application No. 1450/2013 is rejected.

18. Criminal Application No. 679/2013 stands disposed of.