

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.918 OF 2017

Jitendra Jaipal Yadav & Anr. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.A.H.H.Ponda with Mr.Samsheer Garud with Mr.Santosh Avhad
i/b. Jayakar & Partners , Advocate for the Applicants.

Mr.R.M.Pethe, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 14th NOVEMBER 2017.

P.C. :

1 Applicant Jitendra Jaipal Yadav (accused No.3) Police Constable and applicant Deepakkumar Kakran (accused No.6) Police Head Constable, by this application, is seeking their release on bail during pendency of Sessions Case No.754 of 2016 arising out of FIR bearing Crime No.12 of 2016 registered for offences punishable under Sections 302, 193, 182, 201 read with Section 34 and under Section 120B of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity) and under Sections 3, 25 and 27 of the Indian Arms Act, which was earlier registered as Crime No.92 of 2016 with the MIDC Police Station, Mumbai for offences punishable under Sections 302, 353, 332 of the IPC and

under Sections 3, 25 and 27 of the Indian Arms Act, on the basis of report lodged by accused No.1 Pradyuman Yadav, PSI, Crime Branch, Gurgaon, Haryana.

2 Heard the learned Advocate appearing for the applicant/accused at sufficient length of time. He argued that there cannot be any element of criminal conspiracy to eliminate deceased Sandeep Gadoli, who was a dreaded criminal from Haryana against whom 41 serious offences were registered. He was a convict in the capital of offence apart from proclaimed offender in several cases registered against him. The advocate argued that police team comprising of applicant/accused police personnels accompanied by three other police personnels, who are arraigned as accused left Gurgaon after taking due permission of the Commissioner of Police for tracing out Sandeep Gadoli as he was a wanted accused in the crime in 1271 of 2015 for the offence punishable under Section 302 of the IPC and under Section 25 of the Indian Arms Act registered on account of a person named as Ashok Kumar.

3 The learned Advocate appearing for the applicants/accused further argued that there are several statements and evidence forming the part of the charge-sheet which goes to show that right from 7.30 a.m. of 07/02/2016 till just prior to the alleged incident of murdering Sandeep Gadoli,

police team from Haryana Police was constantly seeking help of Mumbai Police in apprehending Sandeep Gadoli. However, no help was provided and that is why, as Sandeep Gadoli was about to leave Hotel Airport Metro at Gurgaon at 12.00 noon of 07/02/2016. Left with no alternative, police team from Haryana Police entered in Hotel Airport Metro, where Sandeep Gadoli along with his five associates were staying. The learned Advocate for the applicant/accused further argued that in the process of apprehending accused Sandeep Gadoli from Room No.107, he opened a fire and in retaliation accused No.1 Pradyuman Yadav PSI and accused No.7 Paramjeet Ahlawat opened the counter fire resulting in death of Sandeep Gadoli.

4 The learned Advocate appearing for the applicants/accused vehemently argued that even if evidence in the form of CCTV footage collected by the Investigator is perused, then also it is seen that at the time of actual firing neither of the present applicants were present on the spot. They reached there subsequently and as seen from the prosecution case, applicant/accused Jitendra Yadav, Police Constable had taken service revolver of accused No.1 Pradyuman Yadav PSI from him. So far as applicant Deepakkumar Kakran, Police Head Constable is concerned, it is seen from the prosecution case that he had broken the CCTV camera. The learned Advocate for the applicants/accused, therefore, submits that both these applicants, who are

from lower rank of Police Department, cannot be attributed any motive and they cannot be termed as accused, who had hatched conspiracy to kill Sandeep Gadoli. The evidence collected by the prosecution does not point out any motive or even incentive to the police team arriving from Haryana to kill the deceased. With this, it is argued that the trial will take its own course and both applicants are police officials, are already suspended, though they acted in discharge of their duty of tracing out the wanted criminal in an offence punishable under Section 302 of the IPC. As such, there is no possibility of tampering of evidence by them. Therefore, they need to be released on bail during pendency of the trial.

5 The learned Additional Public Prosecutor vehemently opposed the application by contending that police van of Mumbai Police was outside the Hotel at 10 O'clock on the day of the incident and police team from Haryana Police was having ample opportunity to ask for help from Mumbai Police in apprehending the wanted accused. The learned Additional Public Prosecutor relying on statement of witnesses found in the charge-sheet, as well as, the CCTV footage argued that it is seen that one of the applicant entered inside the room after the incident. One of them has taken the fire-arm. Applicant Deepakkumar Kakran had broken the CCTV camera. Statements of waiter -Raghu as well as owner of the Hotel namely Tushar were pressed in service for

demonstrating that the incident is fall out of the criminal conspiracy of police personnels of Haryana Police to commit murder of Sandeep Gadoli. Reliance is also placed by the learned Additional Public Prosecutor on the post-event conduct of the accused persons for pointing out the criminal conspiracy to commit murder of Sandeep Gadoli by relying on statement of Manish Khurana - one of the associates of the deceased Sandeep Gadoli. The learned Additional Public Prosecutor submitted that accused persons on the pretext of taking search of associates of Sandeep Gadoli, after the incident in question, took money and mobile phones from them and detained then despite calling them by Mumbai Police. The learned Additional Public Prosecutor, therefore, argued that considering the nature of offence, the applicants are not entitled for bail.

6 I have carefully considered the rival submissions and also perused the entire charge-sheet annexed with the application.

7 The prosecution has pressed in service the penal provisions of section 120-B of the Indian Penal Code for demonstrating that the incident is fall out of the criminal conspiracy hatched by accused persons from Haryana Police with the aid of some private persons for murdering Sandeep Gadoli. It is well settled that most important ingredient of the offence of conspiracy is an agreement between two or more persons to do an

illegal act. The illegal act may or may not be accomplished in pursuant to said agreement. The Court is required to enquire whether two or more persons had come together to pursue unlawful object on meeting their minds. Essentially, offence of conspiracy requires some kind of physical manifestation of the agreement. This aspect will have to be kept in mind in order to draw a *prima facie* inference whether both applicants were acting in league in pursuant to the conspiracy hatched by police personnel of Haryana police.

8 At this juncture, it is also apposite to quote the provisions of Section 166 (3) of the Criminal Procedure Code, which empower the police from police station other than the jurisdictional police station to effect search. It reads thus :

“166. When officer in charge of police station may require an other to issue search warrant.

(1)

(2)

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub- section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.”

9 Bare perusal of this provision makes it clear that if the police officer from other police station has reason to believe that the delay occasioned by following the procedure may result in the chances of concealing or destroying the evidence, the police personnel from other police station can effect search.

10 In the case in hand, the first FIR is lodged by accused No.1 Pradyuman Yadav on 07/02/2016 with MIDC Police Station, Mumbai and then it was entrusted to the Crime Detection Branch of Mumbai Police. A Special Investigation Team was formed for investigating the offence. Accused No.1. Pradyuman Yadav had reported to the police that he with the squad of Unit-4 of Gurgaon Crime Branch had been to Airport Metro Hotel, Mumbai for investigation of the crime and at that time, at room No.107 of the said Hotel, Sandeep Gadoli opened fire on the police team to evade his arrest and attempted to snatch service revolver of the police. Hence, in self-defense, he and Police Constable Paramjeet Ahlawat (accused No.7) opened fire resulting in death of Sandeep Gadoli.

11 Case against the accused persons including present applicants, is to the effect that prior to 07/02/2016 accused police personnel, accused private persons and wanted accused hatched a conspiracy to kill Sandeep Gadoli, who is rival or competitor of one Bindar Gujjar. To implement that conspiracy, they procured

one 7.65 mm. pistol, five cartridges and two empties fired from another 7.65 mm. pistol. The prosecution further alleged that wanted accused Manoj Gujjar obtained information regarding movements of Sandeep Gadoli from co-accused Deepakkumar Kakran and transmitted it to accused police personnels. When Sandeep Gadoli was unarmed and resting in his room in the hotel, on 07/02/2016, after 11.30 a.m. accused No.1 Pradyuman Yadav PSI and accused No.7 Paramjeet Ahlawat, Police Constable fired bullets on him from their service revolver and murdered him. Then they made a show of encounter by planting 7.65 mm. pistol, cartridges and empties on the spot. Accused persons destroyed CCTV camera.

12 Now, let us *prima facie* examine what is the material collected by the Investigator, which is forming the part of the charge-sheet. Charge-sheet itself contains criminal history of deceased Sandeep Gadoli. He has chequered history of 41 criminal cases against him, out of which several are for offence punishable under Section 302 of the IPC and offences affecting human body. There are offences punishable under Sections 392 of the IPC as well as other serious offences registered against him. He is life convict whose appeal was pending. It is seen from the chart annexed by the Investigator with the charge-sheet that deceased Sandeep Gadoli was a proclaimed offender in several cases apart from being an under-trial prisoner in several cases.

Undisputedly, he was wanted accused in Crime No.1271 of 2015 for offences punishable under Section 302 of the IPC, which was under investigation of the Crime Branch, Gurgaon for offence of murder of Ashok Kumar.

13 The prosecution case as reflected from the charge-sheet itself shows that deceased Sandeep Gadoli was on a pleasure trip from Gurgaon, Haryana to Bhiwadi, Rajasthan, Gujrat and then to Mumbai, having been accompanied by his girlfriend Divya, two girls of Russian origin Taniya Atistovhana and Ibrahiva and two associates named Manish Khurana and Pradeep Ahuja. Statement of his associates Pradeep Ahuja recorded by the investigator itself shows that deceased Sandeep Gadoli was to leave Hotel Airport Metro, where he was staying with all of them from 06/02/2016. Pradeep had spoken to the Investigator that they all along with Sandeep Gadoli were to leave Hotel Airport Metro, Mumbai on 12.00 noon of 07/02/2016 for proceeding to Goa. This statement is relevant in the wake of provisions of Section 166(3) of the Code.

14 Statement of witnesses Ashishkumar Singh, Police Head Constable – Listener and Jagatkumar Sharma, Police Inspector, Interception Department reveals that Gurgaon Crime Branch was intercepting telephonic conversation of Divya (accused No.4), Manish Khurana (P.W.No.1) and Pradeep Ahuja (P.W.No.2),

who were accompanying deceased Sandeep Gadoli. This was done under due permission from the Commissioner of Police, Gurgaon. Statement of Jitendra Kumar, Assistant Commissioner of Police shows that there was written permission to the police team comprising of accused persons to proceed from Gurgaon for apprehending accused Sandeep Gadoli (since deceased) as he was wanted accused in Crime No.1271 of 2015. In my opinion, this is an important factor in order to determine whether the alleged act was being done in pursuance to achieving the goal of criminal conspiracy allegedly hatched by the accused persons or whether police team was discharging its official duty in pursuance to the Order from Head of their office i.e. the Commissioner of Police.

15 What happened when accused police personnel reached at Mumbai for apprehending Sandeep Gadoli (since deceased) is also reflected from statements of several police personnel from Mumbai Police. This does not *prima facie* show that the operation was conducted stealthily by accused police personnel from Haryana Police. As pointed out earlier, at 12.00 noon of 07/02/2016, Sandeep Gadoli (since deceased) and his associates were to leave Hotel Airport Metro, Mumbai for proceeding to Goa. Statement of Rajesh Yadav, PSI from Bandra Police Station shows that accused No.1 Pradyuman Yadav PSI met him at 7.30 a.m. at Bandra Police Station and informed him the purpose of his visit by asking about jurisdictional Police Station of

Hotel Airport Metro, Andheri. PSI Rajesh Yadav from Bandra Police Station told accused No.1 Pradyuman Yadav that the same is Sahar Police Station, Mumbai. Thereafter, by informing PSI Yadav from Mumbai Police, accused No.1 Pradyuman Yadav left Bandra Police Station. Statement of API Khanvilkar from Mumbai Police shows that accused No.1 Pradyuman Yadav texted a message to him at 9.36 a.m. of 07/02/2016 informing him that a suspect is at Hotel Airport Metro. Statement of API Khanvilkar further shows that then API Khanvilkar contacted his batch-mate PSI Bajirao Naik of Sahar Police Station, it being a jurisdictional Police Station. API Khanvilkar asked API Naik to help Gurgaon Police. The timing of this happening is important. Statement of API Bajirao Naik, Sahar Police Station reflects his conversation with API Khanvilkar and his instructions regarding need of taking the station diary entry. API Naik gave cellphone number of Police Constable Torne of Crime Branch to Gurgaon Police. Police Constable Torne's statement shows that he was getting continuous call from accused No.1 Pradyuman Yadav and, therefore, he met accused No.1 Pradyuman Yadav and informed him that jurisdictional Police Station is not Sahar Police Station, but it is M.I.D.C. Police Station. Apart from this, it is also seen from statement of Smt.Lata Hake, Police Constable with Sahar Police Station that she received two calls from Gurgaon Police personnel namely Rajbeer Beniwal, but she had not informed this fact to her Superiors. This happened at around 11.15 a.m. of the date of the

incident when Sandeep Gadoli was to leave Hotel Airport Metro, Andheri at 12.00 noon. Even statement of witness Amitkumar Kohad, Police Inspector shows that Gurgaon Police contacted Sahar Police Station just before a shootout, but had not received any assistance. This is the evidence collected by the prosecution, which *prima facie*, indicates that there were several attempts to seek help from Mumbai Police though the time was running out. Wanted accused was to leave the hotel at 12.00 noon of 07/02/2017. The question at the trial on recording the evidence will be whether with such evidence, there can be inference of criminal conspiracy to eliminate Sandeep Gadoli and that too by disclosing everything to the Mumbai Police by the accused persons that they have come to Mumbai for nabbing Sandeep Gadoli. This nature of evidence against the accused persons is required to be kept in mind in order to determine whether they are required to be kept under pre-trial detention when, so far as both applicants are concerned, evidence in the form of CCTV footage points out that they were not present on the scene of occurrence when the police actually opened the fire.

16 Another aspect which reflected from the charge-sheet is in respect of injuries suffered by the co-accused. Accused No.2 Vikram Singh has suffered two injuries to his foot and the Medical Officer has opined that those can be caused by the firearm. Accused No.7 Paramjeet Ahlawat had suffered injury on his

forehead.

17 Actual overt act attributed to the present applicants is to the effect that applicant Jitendra Yadav, Police Constable, after the incident, had taken service revolver of accused Pradyuman Yadav and kept it with him. So far as applicant Deepakkumar Kakran is concerned, evidence against him is to the effect that he had broken the CCTV camera. Camera No.1 shows last firing at 11.23.35 hours. It shows presence of applicant Deepak Kakran at the counter at 11.17.15 hours and his entry in the hotel at 11.18.29 hours. The CCTV footage does not show that he was present on the scene of occurrence at the time of actual commission of crime. Camera No.5 shows that after the incident, applicant Jitendra came at the spot.

18 Considering the nature of evidence collected by the prosecution in order to establish the conspiracy, which has been dealt with in *prima facie* manner by this Court and considering the fact that both applicants are belonging to lower rank in the Police Department, and had come to Mumbai under Orders of the Commissioner of Police, Gurgaon for apprehending the history-cheater wanted in the offence punishable under Section 302 of the IPC and the fact that they were not present on the spot of the incident at the time of commission of the incident in question, I am of the considered opinion that their further pre-trial detention

is not warranted and at this juncture, it is apposite to quote observations of the Honourable Apex Court in the matter of **Dr.Vinod Bhandari v. State of M.P.** reported in **2015 AIR SCW 1052**. Paragraph 12 of the ruling reads thus :

“12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in **Kalyan Chandra Sarkar vs. Rajesh Ranjan, (2005) 2 SCC 42.**”

19 Both applicants being employees of Haryana Police Department, are not likely to abscond, if released on bail. There is no possibility of tampering the evidence by them.

20 In the result, following Order :

(i) The application is allowed.

- (ii) The applicants/accused in Sessions Case No.754 of 2016 arising out of FIR bearing Crime No.12 of 2016 registered for offences punishable under Sections 302, 193, 182, 201 read with Section 34 and under Section 120B of the Indian Penal Code and under Sections 3, 25 and 27 of the Indian Arms Act, which was earlier registered as Crime No.92 of 2016 with the MIDC Police Station, Mumbai for offences punishable under Sections 302, 353, 332 of the IPC and under Sections 3, 25 and 27 of the Indian Arms Act, are directed to be released on bail on their executing PR. Bond in the sum of Rs.15,000/- each and on furnishing surety in the like amount by each of them.
- (iii) As a condition of this Order, the applicants shall not tamper with the prosecution evidence.
- (iv) The applicants/accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.
- (v) The applicants should co-operate the trial court in expeditious disposal of the trial.

(A.M.BADAR J.)