

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 8374 of 2021**

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AMITKUMAR BABUBHAI KATARA
Versus
THE STATE OF GUJARAT

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Appearance:
for the Applicant(s) No. 1
MR YOGESH LAKHANI, SENIOR COUNSEL WITH MR. RAHUL R
DHOLAKIA(6765) for the Applicant(s) No. 1
MR MITESH AMIN, PP WITH MR MANAN MEHTA, APP for the
Respondent(s) No. 1
=====**CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 23/05/2022****ORAL ORDER**

1. This regular bail application is filed by the applicant under Section 439 of Cr.P.C, seeking his release on regular bail in connection with FIR being C.R. No.11821030200568 of 2020 registered with Jhalod Police Station, District: Dahod for the offences punishable under Sections 302, 303 read with Sections 120(b) and 201 of IPC.

2. The case of the prosecution is that, criminal conspiracy alleged to have been formed to commit the murder of Hiren Patel, resident of City: Jhalod, District: Dahod. Accused numbering 1 to 9, including the present applicant have hatched a criminal conspiracy to kill deceased and in furtherance of said conspiracy, the work was entrusted to accused no.3 Irfan Pada, through accused no.4 Ajay Kalal and accused no.7 Imran Gudala, by accused no.8 Amit Katara, who had a political animosity with the deceased.

3. The alleged incident took place in early morning of 27.09.2020 between 5:30 a.m. to 6:30 a.m. when deceased Hiren Patel was on

his regular morning walk and when he was on Jhalod to Dahod Road, he was hit by speeding pick up loading vehicle from behind and after that, the driver with the vehicle fled away. During the course of investigation and considering the statement of witnesses and after making analysis of call details, C.C.T.V footages, it was revealed that due to political differences, the criminal conspiracy as referred above in para-1 had been hatched to kill the deceased by using vehicle so that the whole incident seen as an accident.

4. The outcome of the investigation revealed that, deceased Hirenbai was elected Councilor of Jhalod Municipality, whereas, wife of accused no.8 Amit Katara, namely Kinjalben was being a Councilor, elected as President of Municipality, for a period of two and half years. In August-2020, the election was due for President and Vice President of Municipality. Deceased was in opposition party, representing BJP. The municipality body was ruled by Congress party and both President and Vice President were elected from the party, on account of majority of ruling body. Next election of President and Vice President was scheduled to be held on 26.08.2020. The deceased being an active member of rival group, managed to win over the councilors of ruling body and before election could held, deceased along with ruling party councilors, went to different places on tour and on the day of election, i.e. on 26.08.2020, they came back at Jhalod. Despite the whip issued by the Congress party, the councilors from the ruling party made cross-voting, as a result of which, as per the understanding made amongst the members, the Vice President Sonalben, though represented to the Congress party, was elected as President of Municipality with the support of opposition councilors and one Nandaben Vaghela, elected as Vice President who had fought election as independent candidate.

5. It is further case of the prosecution that, due to unexpected result of election, the accused no.8 Amit Katara being an active politician, having political grudge, accused no.4 Ajay Kalal supporter of ruling party, decided to eliminate the deceased as they do not like the domination on the deceased on the municipal body, they formed criminal conspiracy to kill deceased Hirenbai. The accused no.4 Ajay Kalal was given green signal from Amit Katara to execute the object of criminal conspiracy. Accused Ajay Kalal in consultation with accused no.7 Imran Gudala, contacted accused no.3 Irfan Pada, resident of Godhra, who has been convicted in connection with Godhra carnage and is sentenced to undergo life imprisonment. At the time of meeting, the accused no.3 Irfan Pada after release from jail on parole leave, he did not reported to the Jail Authority and was absconding.

6. It is further case of the prosecution that, as a part of large conspiracy hatched by the accused no.8, 4 and 7, the accused no.3 Irfan Pada agreed to eliminate deceased Hirenbai for a consideration of Rs.20 lakhs for which he received Rs. 2 lakhs in advance by accused no.4 Ajay Kalal.

7. It is further case of the prosecution that, accused no.3 Irfan Pada was given necessary inputs of daily routine of deceased Hirenbai by accused no.4 and 7, as deceased used to go on morning walk between 5:30 a.m. to 6:30 a.m. on the road going from Jhalod to Dahod. Accused no.3, arranged the meeting with accused no.2, accused no.5 and accused no.6 at the Dhaba (Highway Eatery) and decided to eliminate the deceased by using pick up loading vehicle. The accused no.6, arranged for bolero car bearing registration No.MP-09-CK-4981. On 26.09.2020, the accused no.1, 2, 3 and Irfan Bhisti were proceeded from Mahidhpur, Madhya Pradesh at about 8:30 p.m. in two different vehicles i.e. Mahindra Bolero car and Ford Figo Car. The Ford Figo Car, was parked at

Railway Station, Dahod by accused no.3 and thereafter, all the accused, proceeded towards the place of incident in a Bolero Car. It is further case of the prosecution that, they had cup of tea, at the tea stall run by witness Chetan Machar near Muvada Crossroad, Jhalod a place proximate to the place of commission of offence. It is further case of the prosecution that, till end of incident, the accused were in contact with each other on their mobiles. It is further case of the prosecution that, before the incident took place, the accused no.3 and accused Imran Gudala, conducted reiki and thereafter, as per plan, when deceased was on his regular morning walk, was hit by speeding pick up loading vehicle, alleged to have been he was given a dash by pick up loading vehicle, alleged to have been arranged by the accused no.3. Thereafter, the incident, the driver fled away along with the vehicle. Deceased was brought dead to the hospital.

8. It is further case of the prosecution that, son of the deceased namely Panth disclosed before the police authority expressing his apprehension that due to political rivalry, someone caused fatal injuries to his father or he was intentionally hit by the vehicle. Initially, police has registered A.D. Case under Section 173 of Cr.P.C. During the course of investigation, statements of the son of deceased and his wife were recorded, wherein reference was made about election of President and Vice President of the Municipality. It was revealed during the investigation that the bolero car used by the accused and in furtherance of the conspiracy hatched by the accused, his father was killed by using vehicle for which contract killing was given to accused Irfan Pada. The Deputy Superintendent of Police, Dahod lodged an FIR on 13.10.2020 wherein name of the accused no.1 to 5 have been disclosed and there was also reference of the name of accused no.8 and driver of vehicle. The accused were arrested and they have been chargesheeted. Thereafter, name of Amit Katara - accused no.8 who is the main conspirator of the

alleged incident emerged during the course of investigation and later on, he as well as his aid Imran Gudala - accused no.7 arrested on 31.12.2020 and also chargesheeted. Both the cases have been committed to the Sessions Court, Dahod which came to be registered as Sessions Case No.10/2021 and 49/2021.

9. This Court has heard Mr. Yogesh Lakhani, learned Senior Counsel assisted by Mr. Rahul Dholakia, learned counsel for the applicant and Mr. Mitesh Amin, learned Public Prosecutor assisted by Mr. Manan Maheta, learned APP for the respondent-State.

10. Mr. Yogesh Lakhani, learned Senior Counsel for and on behalf of the applicant, raised following contentions:

(i) That, the applicant herein has been falsely implicated in the alleged offence. There is no sufficient material to infer that the applicant herein is involved in the commission of the crime.

(ii) That, when the case of the prosecution is based on circumstantial evidence, motive always assumes significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the Court on his guard to scrutinize the circumstances more carefully to ensure that the suspicion and conjecture do not take place of legal proof. In the facts of present case, the theory of election disputes is projected by the investigating agency by recording statements of witnesses, wherein it is sought to prove that the applicant herein had a grudge against the deceased as his wife was de-seated from the post of President of Municipality and one Sonalben was elected with the aid of deceased. In this context, it was submitted that Sonalben and Kinjalben i.e. wife of the present applicant, are belong to same political party, whereas deceased was from different political party.

Undisputedly, it is on record that on the day of election, whip was issued by the ruling party and accordingly, Sonalben being a councilor of ruling party, was elected as President because earlier she was Vice President. Therefore, the theory projected by the prosecution with respect to election of President, do not much helpful in establishing the motive behind the crime. Learned Senior Counsel drew attention of this Court to the statement of husband of Sonalben namely Hareshbhai Dindor wherein attempts have been made to rope in the applicant herein in the alleged offence. However, the witness Dinor Hareshbhai in his statement disclosed that, one Salim @ Ikram Mohammad was referring the name of Ajay Kalal and he did not specifically mention the role of the applicant in the alleged elimination of the deceased. Therefore, it is evident from the entire chargesheet case papers that the motive in the present case, is not established. If it is so, then, no any prima-facie case is made out, involving the applicant herein in the alleged offence.

(iii) That, the investigating agency, while implicating the applicant herein mainly relied upon the confessional statement of the co-accused Imran Gudala which was recorded by the police when he was in police custody wherein he confessed that the applicant and accused Ajay kalal had an animosity with the deceased and therefore, they conspired to eliminate the deceased. The statement of co-accused is hit by Section 25 and 26 of the Evidence Act and it cannot be looked into, so far role of the present applicant is concerned.

(iv) That, upon bare perusal of the P.M. Report of the deceased, which is in complete contradiction with the prosecution's case. There are only two bodily injuries mentioned in column no.17 of the P.M. Report. Out of two injuries, one noted to be incised laceration wound and second one is an oblique brownish red colour abrasion and as such there is no fracture injuries found on the body of the

deceased and therefore, if we consider Modi's Medical Jurisprudence, Chapter 26, prima-facie, it disapproves the theory of hitting the deceased by speeding vehicle and it is contrary to the material collected during the course of investigation.

(v) It was vehemently submitted that during the demonstration panchnama, the accused no.3, did not have pointed out the whereabouts of pick up loading vehicle and failed to provide the information about the nature of vehicle and how it was hit the deceased. The vehicle which has given a dash to the deceased is still not traceable and driver of the same is still at run. Therefore, the panchnama, which is inadmissible in evidence, is silent on the main incident and therefore, merely on the basis of suspicion, projecting the case of political grudge, the applicant herein has been implicated in the alleged offence with oblique motive as his brother is sitting M.L.A., and he is the son of Ex-M.P.

(vi) That, the C.D.R. details, having been submitted during the course of arguments of present bail application, cannot a decisive factor to hold that the applicant has conspired, to kill the deceased. The call details shows the conservation of the applicant with accused Ajay Kalal and accused Imran Gudala, it can be termed as routine calls as all are residents of Jhalod. Therefore, based on the call details, it cannot be said that the applicant herein is involved in the alleged offence. On the issue of data of IPDR, it was submitted that, each and every package of mobile data is remains active, though, mobile is actually not in use. Therefore, the IPDR data, produced by the prosecution to show that on the day of incident, in night hours, the mobile phones of the accused were active. However, technically, in usual practice, the data is always active, even though, mobile phone is off. Therefore, based on the production of the IPDR data, it cannot be inferred that on the day of incident, the applicant made conversation by using mobile

application.

(vii) That, so far as application submitted by deceased to Dahod Police about his safety is concerned, it appears that, pursuant to the application, the statement of deceased was recorded by Dahod Police, wherein he had claimed to set up SRP Points at certain places to avoid clash between two rival groups as election was due. Therefore, placing reliance on the application dated 27.04.2019 by the prosecution to show the apprehension of danger to the life of the deceased by the applicant herein is not established and therefore, it cannot be said that there was political rivalry between the applicant and the deceased.

11. In view of the aforesaid contentions, learned Senior Counsel for the applicant submitted that since 31.12.2020, the applicant is in jail. He has no any past criminal record, as whatever cases referred by the investigating agency in the affidavit, the applicant herein acquitted in all cases. The applicant-accused having roots in the society and he does not flee away from justice. Thus, therefore, when there is no prima-facie case against the applicant herein, the further detention of the applicant is nothing but a pre-trial punishment.

12. Mr. Mitesh Amin, learned Public Prosecutor, contended that, the present applicant is an influential person of City Jhalod as his brother is sitting MLA and he is the son of Ex-M.P and his wife is elected Councilor of Jhalod Municipality and as she was a President of Municipality, the applicant was dominating the day-to-day administration of the municipality. The deceased Hiren Patel being a Councilor was in opposition as his party having no majority to rule the municipality. In this background facts, it was submitted that, the election of President and Vice President was due and it was scheduled to be held in the month of August-2020. The fact remains

that, the Vice President Sonalben though representing ruling party, was elected as a President with the support of opposition councilors for which deceased had played major role to win over the councilors of the ruling party. Therefore, it was the deceased who played a major role in the election of President and without his indulgence, Sonalben and Vice President Nandaben could not preside over the post of the municipality. It was submitted that, in view of the aforesaid facts, being aggrieved with the indulgence of the deceased and his position to control the administration of the municipality, the applicant herein and his aid Ajay Kalal and Imran Gudala formed criminal conspiracy with the object to eliminate the deceased and to brought back the councilors who were switch over to the opposition. In order to execute the conspiracy, accused Ajay Kalal, met the accused no.3 Irfan Pada to eliminate the deceased and in turn, on 26.10.2020, he along with co-accused, conducted reiki and on the same day when deceased was on his morning walk, he was hit by pick up loading vehicle alleged to have been managed by the accused no.3 Irfan Pada. In these circumstances, it was submitted that motive behind the crime is established and the circumstances as referred above which clearly established the involvement of the applicant herein in the alleged offence.

13. In support of aforesaid submissions, reliance has been placed on the decision of the Apex Court rendered in case of **Harjit Singh V/s. Inderpreet Singh alias Inder and Another** reported in **2021 SCC OnLine SC 633**, to submit that, there is sufficient material collected during the course of investigation against the applicant herein to establish his involvement in the alleged offence and therefore, prima-facie, there is sufficient material against the applicant to hold that he has committed the alleged offence. The offence is grave and serious and therefore, at this stage, no need to examine the evidence, establishing the guilt of the accused beyond reasonable doubt. Lastly, it was submitted that considering the

background history of the applicant herein, if he is released on bail, then, there is reasonable apprehension of the witnesses being tempered with, which may impact the trial proceedings.

14. This Court has considered the facts and circumstances of the present case as well as submissions made by learned counsel appearing for the respective parties and carefully perused the chargesheet case papers.

15. Before proceeding further, it is beneficial to refer to and rely on the settled principle of law and parameters to be followed and considered by the Court while rejecting or allowing bail application.

16. In case of **State of U.P. v. Amarmani Tripathi** reported in **2005 8 SCC 21**, the Apex Court in para-18 held as under:

"It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tempered with; and (viii) danger, of course, of justice being thwarted by grant of bail"

17. In the case of **Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas** reported in **(2002) 3 SCC 598**, the Apex Court laid down the factors, for exercising the power to decide the bail application, observed that, it is not expected by the Court to have the entire evidence establishing the guilt of the accused beyond reasonable doubt, but there ought to be a prima-facie satisfaction of the Court in support of the charge. It is further observed by the Apex Court that, whether case is fit for grant of bail involves the balancing of numerous factors, amongst which nature of offence, severity of punishment and prima-facie view of the

involvement of the accused are important. No straight jacket formula exists for Courts to assess an application for grant or rejection of bail as it all depends on the peculiar facts of the case.

18. In light of settled principles and parameters as referred above and considering the facts and circumstances of the present case, this Court is of view that, the grant or refusal of the bail is regulated, to large extent, by the facts and circumstances of each particular case. The only consideration required is whether there is a reasonable ground for believing that the applicant has committed the offence and therefore, at the stage of bail, it is not expected to have the evidence establishing the guilt of the accused beyond reasonable doubt. The contentions whatever raised herein above, it is the trial Court to consider and appreciate the evidence. The Court should not go into merits of the case by appreciation of the evidence. Thus, considering the facts and circumstances of the present case, it appears that the applicant was dominating over the municipality affairs as his wife was President and the whole body was representing one party. In this context, when deceased had managed to win over the councilors of the ruling party, naturally, the issue of ruling of municipality would arise. At this stage, considering the material collected during the course of investigation, it cannot be said that there is no evidence connecting the applicant herein in the alleged offence. It is alleged that, the applicant conspired to kill the deceased for which, he agreed to finance also. The C.D.R. Details, shows that there were large number of calls amongst the accused and more particularly, the present applicant, accused Ajay Kalal and accused Imran Gudala were in constant touch by surfing the internet data during intervening night of 26/27.09.2020, almost from midnight to the time when offence was actually committed. The witness Babubhai Pangla, in his statement disclosed that the accused Irfan Pada asked for his mobile to call accused Ajay Kalal and accordingly, in T.I.

Parade also, witness has identified the accused. The investigating agency obtained internet protocol detailed record, called as 'IPDR' so as to enable them to track internet based voice calls. In the facts of present case, as discussed herein above, the applicant and co-accused made conversation on his mobile phone and therefore, it cannot be termed as routine call as usual made by the parties.

19. For the foregoing reasons, without expressing anything on merits of the prosecution case, this Court is of prima-facie view that, the involvement of the applicant-accused is established and therefore, considering the nature and gravity of accusations, severity of punishment and interest of the society at large and having regard to the circumstances as discussed herein above, this Court is not inclined to admit the applicant on bail.

20. Accordingly, present application stands dismissed. Rule is discharged.

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(ILESH J. VORA,J)

THE HIGH COURT
OF GUJARAT

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