

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

CRIMINAL APPEAL NO. 258 OF 2022

Pradeep Rameshwar Sharma,
Age : 59, Occu : Retired,
Plot No. 601, Bhagwan Bhavan, JB Nagar,
Andheri (East), Mumbai – 400 059

...Appellant/
Accused No. 10

Versus

1. National Investigating Agency,
7th Floor, MTNL, Telephone Exchange
Building, Pedder Road, Cumballa Hill,
Mumbai – 400 026

2. The State of Maharashtra

...Respondents

Mr. Aabad H. Ponda, Sr. Advocate a/w Mr. Subhash Jadhav,
Mr. Chandansingh Shekhawat, Mr. Dilip Kumar Rawat,
Mr. Yashovardhan Deshmukh and Mr. Prasanna Kumar i/b Mr. Waqar
Nasir Pathan for the Appellant

Mr. Anil Singh, Additional Solicitor General a/w Mr. Sandesh
Dadasaheb Patil, Mr. Aditya Thakkar, Mr. Chintan Shah and Ms.
Savita Sadananda for the Respondent No.1-NIA

Mr. J. P. Yagnik, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE &

R. N. LADDHA, JJ.

RESERVED ON : 16.12.2022

PRONOUNCED ON : 23.01.2023

JUDGMENT (Per Revati Mohite Dere, J.) :

1 In view of not before order passed by Justice A. S. Gadkari vide order dated 21.09.2022, the present appeal is listed before this Bench.

2 By this appeal, preferred under Section 21 of the National Investigation Agency Act, 2008 ('the NIA Act'), the appellant (A-10) has impugned the order dated 16.02.2022 passed by the learned Special Court (NIA), Greater Mumbai, rejecting his application for bail and as such seeks his enlargement on bail in connection with NIA RC 01/2021/NIA/MUM (NIA Special Case No. 1090/2021), for the alleged offences punishable under Sections 120B, 201, 302, 364 and 403 of the Indian Penal Code ('IPC'), Section 25 of the Arms Act and Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 2004.

Relevant Facts :

3 A few facts as are necessary to decide the appeal are as under :

3.1 On 25.02.2021, in the wee hours, a Mahindra Scorpio vehicle was found parked on Carmichael Road, near Antilia Building i.e. near the residence of a prominent businessman. On 25.02.2021 itself, the police of the Gamdevi Police Station found 20 gelatin sticks and a note in the said car, threatening a prominent industrialist and his wife. Pursuant thereto, the Gamdevi Police lodged an FIR, which was registered vide C.R. No. 35/2021 under Sections 286, 465, 473, 506(2) and 120B of the IPC and Section 4(a)(b)(i) of the Explosive Substances Act, against unknown persons.

3.2 The said C.R. was transferred to the Crime Intelligence Unit, Crime Branch, Mumbai ('the CIU') and the case

came to be re-registered as **C.R. No. 40/2021**. The investigation of the said case was assigned to Sachin Waze (A-1), the then API, CIU, Crime Branch, Mumbai, for investigation. During the course of investigation, it was learnt that the Scorpio vehicle which was found, had a fake number plate and that the actual number of the vehicle was MH-02-AY-2815. In respect of the said Scorpio vehicle, a separate C.R. i.e. **C.R. No. 47/2021** was registered with **Vikhroli Police Station, Mumbai**, by Mansukh Hiren (deceased) on **18.02.2021** alleging theft of his vehicle i.e. for an offence punishable under Section 379 of the IPC. According to Mansukh Hiren (deceased), his vehicle i.e. Scorpio vehicle was stolen on 17.02.2021, by unknown person.

3.3 The investigation of the said C.R. i.e. C.R. No. 47/2021 registered with the Vikhroli Police Station was also transferred to CIU, Crime Branch, Mumbai and the said C.R. was re-registered as **C.R. No. 41/2021**. The investigation of the said case was also assigned to Sachin Waze (A-1).

3.4 On 01.03.2021 and 02.03.2021, Mansukh Hiren (deceased) was summoned by the CIU, Crime Branch, pursuant to which, Mansukh Hiren attended the CIU Office on **02.03.2021** and **03.03.2021**.

3.5 On **04.03.2021**, Mansukh Hiren left his house to meet one police officer named Tawde, after which he did not return home. Pursuant thereto, on the next day, i.e. on **05.03.2021**, a missing person complaint was filed at the Naupada Police Station, Thane, by Mansukh Hiren's son-Meet Hiren. The said complaint was registered vide Missing Person Report No. 16/2021.

3.6 On **05.03.2021**, Mansukh Hiren's dead body was found by Mumbra Police in the creek area of Retibunder. Pursuant thereto, an **Accidental Death Report No. 39/2021** under Section 174 of the Cr.P.C was registered by the **Mumbra Police Station**. During the course of investigation by the Mumbra Police,

Mansukh Hiren's widow-Vimla Hiren, in her written complaint before the ATS, Thane Unit, alleged foul play and expressed her suspicion against Sachin Waze.

3.7 On **06.03.2021**, the Government of Maharashtra issued an order transferring the cases relating to placing of explosive laden Scorpio SUV, theft of Scorpio vehicle and the ADR case of Mansukh Hiren, to the Anti Terrorist Squad ('ATS'), Maharashtra for further investigation.

3.8 On **07.03.2021**, the ATS, Maharashtra converted the ADR No. 39/2021 into an offence of murder and re-registered the case as **C.R. No. 12/2021**, alleging offences punishable under Sections 302, 201, 34, 120-B of the IPC, as against unknown persons, for the murder of Mansukh Hiren. The cases relating to placing of explosive laden Scorpio SUV and theft of Scorpio vehicle were re-registered by the **ATS, Maharashtra, as C.R. Nos. 10/2021 and 11/2021** respectively.

3.9 On **08.03.2021**, **20.03.2021** and **21.03.2021**, as per the directions of the Ministry of Home Affairs, Government of India, the NIA took over the investigation of the aforesaid cases and directed the NIA to suo-motu register a case and take up the investigation. Accordingly, the case was re-registered by NIA, as **NIA RC 01/2021/NIA/MUM** on **08.03.2021** and the original case papers and articles were handed over by the ATS, Maharashtra to NIA, **BO-Mumbai**, on **10.03.2021**.

3.10 During the course of investigation, it was found that Sachin Waze (A-1), alongwith other co-accused, including the appellant, had committed heinous and serious offences attracting the provisions of the UAPA and hence, Sections 16, 18 and 20 of the UAPA, were invoked.

3.11 During the course of investigation, several persons involved in the commission of the offence were arrested. As far as the appellant is concerned, he was arrested on **17.06.2021**. On

completion of investigation, the NIA filed charge-sheet on **03.09.2021** as against 10 accused i.e. (1) Sachin Waze, (2) Naresh Gor, (3) Vinayak Shinde, (4) Riyazuddin Kazi, (5) Sunil Mane, (6) Santosh Shelar, (7) Anand Jadhav, (8) Satish Mothkuri, (9) Manish Soni and (10) Pradeep Sharma under various provisions of the IPC, UAPA, Explosive Substances Act and Arms Act. We are informed that the NIA has also filed an application under Section 173(8) of the Cr.P.C.

3.12 In the charge-sheet filed by the NIA, in paragraph 18 i.e. **`18-CHARGES`**, the allegations against the appellant are set-out in para 18.10. The said para reads as under :

“18.10 Offences committed by accused A-10 (Appellant-Pradeep Sharma):- He willingly and intentionally entered into a well organized criminal conspiracy for the execution of Murder of Mansukh Hiran, which was a direct outcome of the terrorist act committed by A-1 and others. He along with A-1 and A-5 attended various meetings in CP office compound for the execution of murder of Mansukh Hiran. As the main conspirator, he hired A-6 and henchmen for

killing Mansukh Hiran by offering them huge amount of money received by him from A-1. He directed A-6 to arrange benami SIM cards and mobile for communication during the planning and execution of murder of Mansukh Hiran. He, used one benami SIM card & mobile phone given by A-6 (procured by A-9), for the planning and execution of murder of Mansukh Hiran. He received huge cash amount from A-1 for executing the murder of Mansukh Hiran. After murder of Mansukh Hiran, he directed A-6 to flee from Mumbai to Nepal along with henchmen of A-6 to avoid getting arrested. Through A-6, he organized the fleeing of A-9 from Mumbai to Dubai and thereafter he arranged for stay of A-9 at Sai Leela Grand Hotel, Andheri (East), Mumbai operated in benami by him. Hence A-10 is to be charged under the sections shown against his name in the table below.”

3.13 The sections alleged in the table *qua* the appellant are in **Para 18.12**. The sections with which the appellant has been charged are **Sections 120B, 201, 302, 364 and 403** of the IPC; **Section 25** of the Arms Act and **Sections 16, 18 and 20** of Unlawful Activities (Prevention) Act.

3.14 As per the charge-sheet, the appellant had conspired with Sachin Waze and others, to eliminate Mansukh Hiren.

3.15 We may note, that the charge-sheet, does not *prima facie* disclose that the appellant was involved in the conspiracy of planting gelatin sticks in the Scorpio vehicle. Presumably, hence, the provisions of the Explosive Substances Act and Arms Act, were not applied by the NIA against the appellant. Admittedly, NIA has not obtained sanction to prosecute the appellant either under the Arms Act or under the Explosive Substances Act. The sanction orders are at page Nos. 68 and 70 of the charge-sheet and the sanction is only against Sachin Waze under the said Acts, and no other accused.

Submissions of Mr. Ponda :

4 Mr. Ponda, learned senior counsel for the appellant submitted that the circumstances relied upon by the prosecution

are contrary to the documents and statements of witnesses on record. He further submitted that as seen from the charge-sheet filed by the NIA, the appellant is not concerned with the Scorpio vehicle laden with gelatin sticks and that the appellant's role allegedly comes, post the incident i.e. in eliminating Mansukh Hireen, according to the NIA. Learned senior counsel heavily relied on the statement of Advocate K. H. Giri, to show the said witness's assessment about Mansukh Hireen, when he met him on 02.03.2021 i.e. he found Mansukh Hireen to be a bold person with no frustration of any kind on his face. Reliance was also placed on the statements of witnesses to show contradictions in the statements with respect to the presence of Sachin Waze at the P.S. Foundation Office i.e. meeting with the appellant, when Sachin Waze allegedly handed over a bag containing cash. He further submitted that the circumstances relied upon by the prosecution do not satisfy the requirements as mandated by law in a case relating to circumstantial evidence. He submitted that there is no legal, cogent, admissible evidence to connect the

appellant with the murder of Mansukh Hiren. In this connection, learned senior counsel relied on the decision of the Apex Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra*¹ and several other judgments enunciating the principles on circumstantial evidence. He submitted that the circumstances relied upon by the prosecution are not consistent with the hypothesis of the guilt of the appellant and on the contrary, the circumstances relied upon, are consistent with the innocence of the appellant. He submitted that each of the circumstance relied upon by the prosecution is not only contrary to the prosecution evidence on record, but there is a reasonable explanation for each of the circumstance.

Submissions of Mr. Anil Singh, the learned Additional Solicitor General (‘ASG’) :

5 Learned ASG vehemently opposed the appeal. He submitted that the circumstances on record clearly point to the complicity of the appellant in the crime. He submitted that the

1 (1984) 4 SCC 116

defence of the appellant cannot be looked into at this stage, while considering his prayer for bail. He submitted that the appellant is facing prosecution not only under the provisions of the IPC but even under the UAPA. He submitted that the circumstances on record clearly show that the appellant had conspired with Sachin Waze and others to eliminate Mansukh Hiren. In support of the said submission, learned ASG relied on several statements and documents from the charge-sheet.

6 Both, learned senior counsel for the appellant and learned ASG have tendered their written submissions and compilations, during the course of arguments, which we have taken on record.

Reasons :

7 Perused the papers with the assistance of the learned counsel for the respective parties.

7.1 At the outset, we express some anguish in the manner in which the NIA has investigated the charge of conspiracy of parking of the Scorpio vehicle near the residence of a prominent businessman and planting of gelatin sticks in the said vehicle, on 24/25.02.2021.

7.2 We may note, that during the course of the arguments, we asked the learned ASG, as to with whom Sachin Waze had entered into a conspiracy to plant gelatin sticks in the Scorpio vehicle, considering that the charge against Sachin Waze is, that he had entered into conspiracy to plant gelatin sticks in the Scorpio vehicle **`with others'**. With whom? The charge-sheet is silent. Hence, learned ASG took time. Though the charge-sheet says Sachin Waze entered into a conspiracy **`with others'** to plant gelatin sticks in the Scorpio vehicle, the names of the co-conspirators are curiously not spelt out.

7.3 On the next date of hearing, learned ASG, on

instructions, stated that Sachin Waze had entered into a conspiracy on 17.02.2021 with the appellant even in the parking and planting of gelatin sticks in the Scorpio vehicle. The said submission came, for the first time, during the course of the arguments, only when we questioned, as to with whom Sachin Waze had conspired with. Atleast, *prima facie*, we do not find any material from the NIA charge-sheet that the appellant was involved in the parking and planting of the gelatin sticks in the Scorpio vehicle. If this was the NIA's case, why then had they remained silent and not disclosed the same in the charge-sheet, is perplexing.

7.4 Learned ASG, to buttress the said submission of conspiracy, relied on the CDRs of the appellant of 17.02.2021 i.e. the date on which Mansukh Hiren had parked the vehicle at Vikhroli. In support of the said submission, learned ASG made a feeble attempt to show from the CDRs that the appellant was at Masjid Bandar at 20:17 hrs., at which time, Sachin Waze was

also at Masjid Bandar and later, the appellant was at Vikhroli at 22:56 hrs., in the area, where Mansukh Hiren had parked his Scorpio car.

7.5 It is pertinent to note, that it is the prosecution case, that Sachin Waze wanted to plant gelatin sticks in a vehicle, and for the said purpose, chose a Scorpio vehicle, belonging to Mansukh Hiren; that on **17.02.2021**, Sachin Waze asked Mansukh Hiren to drive the Scorpio from Thane towards Vikhroli and park the same on the service road near the flyover at Airoli junction on the Eastern Express Highway; that Sachin Waze asked Mansukh Hiren to handover keys of the said vehicle to him near the CP Office compound; that Mansukh Hiren complied with the same by parking his vehicle on the Eastern Express Highway; that after parking the vehicle, Mansukh Hiren took an Ola Cab to meet Sachin Waze, to handover the keys of the Scorpio Car; that the Ola dropped Mansukh Hiren near G.P.O. at around 20:10 hrs.; that after taking the car keys, Sachin Waze left

alongwith KW-1 towards Eastern Freeway; that at 21:50 hrs., KW-1 and Sachin Waze reached the spot, where the Scorpio was parked and Sachin Waze directed KW-1 to open the car and change the number plate of the said Scorpio vehicle and to take it to Saket Colony (residence of Sachin Waze).

7.6 The CDRs of Sachin Waze relied upon by the learned ASG show that Sachin Waze was present on 17.02.2021 at Asmulka House, Narsi Natha Street, Near Masjid Railway Station, Katha Bazar, Mumbai-400 009 from 18:37 hrs. to 20:16 hrs. and from there, left towards Crawford Market and reached there at 20:45 hrs. The appellant's CDR relied upon shows that the appellant on 17.02.2021, reached Dockyard Road, Mumbai-400 010 at 20:10 hrs. and from there, travelled towards P'Demello Road, Near BPT, Masjid Bandar (East), Mumbai at 20:25 till 20:36 hrs. It is the appellant's case that he had gone to attend a wedding. He relied on a photo taken at the said wedding. *Prima facie*, the CDRs of Sachin Waze and appellant do

not reveal that they were together either at Masjid Bandar or Mazgaon, as contended by the learned ASG. We may note that *prima facie*, except for the said CDRs, which were pointed out for the first time during arguments, prosecution has not been able to show that the appellant and Sachin Waze had met on 17.02.2021. Infact, KW-1 was with Sachin Waze on 17.02.2021. His statement also does not reveal that they (Sachin Waze and the appellant) met on that day. According to the learned ASG, the timings of the CDRs, if perused, show that the appellant was in the Vikhroli area from 21.10 hrs. till 23.45 hrs., where, the vehicle was parked. The appellant's CDR shows that he was in Vikhroli (West) during this period, whereas, the vehicle was parked in Vikhroli (East). Although, learned ASG submitted that there can be overlapping of areas, we are *prima facie* not satisfied with the explanation. Be that as it may, why appellant went there? Not known. No CDRs were also brought to our notice to show that any calls were exchanged between Sachin Waze and appellant on that day. Neither it is the prosecution case, that the

appellant was present at the spot near the car, when Sachin Waze and KW-1 reached the spot, where the Scorpio was parked i.e. Eastern Express Highway.

7.7 It appears that the NIA, after a detailed investigation, had not charge-sheeted the appellant for the offence pertaining to the Scorpio vehicle, which was laden with gelatin sticks. *Prima facie*, we feel that this feeble attempt was made to connect the appellant with Sachin Waze only when we questioned the NIA, as to with whom Sachin Waze had conspired with, in planting of gelatin sticks in the Scorpio vehicle. In a case of this magnitude, *prima facie*, it is highly impossible that Sachin Waze himself would be involved, without the help, assistance or may be, guidance of some others. We may note, that it is the prosecution case, that Sachin Waze had done a lot of planning in this regard, when he planted gelatin sticks in a Scorpio vehicle near a prominent businessman's residence i.e. he had booked a room in Hotel Oberoi for 100 days; had paid in cash for booking of the

room in Hotel Oberoi; had given a fake Aadhar Card, etc. We, *prima facie*, find that the NIA has not done investigation with regard to the same i.e. with respect to the co-conspirators involved in planting of gelatin sticks in the Scorpio vehicle.

7.8 Infact, when we questioned the learned ASG, as to who had planted the note threatening the businessman's family and as to who was the author of the same, he submitted that it was Sachin Waze. As far as the alleged telegram as well as the alleged claim put up by Jaish-ul-Hind on the Telegram Channel is concerned, when we questioned the learned ASG, he submitted that again, it was Sachin Waze, who was the author of the same. When questioned, whether there were any documents/statements with respect to the same, the answer was in the negative.

7.9 At this stage, Mr. Ponda, learned senior counsel appearing in the aforesaid appeal and Mr. Chaudhary appearing in the connected appeal, submitted that for reasons best known,

NIA was trying to protect the higher-ups. Mr. Chaudhary tendered two statements, which are part of the charge-sheet. They submitted that for the reasons best known, the higher-ups were being protected. They relied upon the statement of one Ishaan Sinha (a resident of Ghaziabad), whose statement has been recorded by the NIA. The said witness in his statement has stated that he is a Cyber Security professional and has a firm by the name Blacktronics and that he offers professional services to various Intelligence and Investigation Agencies under the Government of India and State Police Organizations. He has stated that the NIA showed him one email dated 09.03.2021, tagged `Confidential`, sent by him to the Commissioner of Police (`CP`), Mumbai and attachment thereof in two pages. He has stated that he provided full details regarding the said communication. According to the said witness, he has stated that he had visited the office of CP, Mumbai on 09.03.2021, in connection with the training program concluded by him in January 2021 for Crime Branch, Mumbai and training for

Additional CPs, Mumbai in the first week of February 2021. He has stated that during the second meeting on 09.03.2021, he mentioned to the then CP that the Telegram Channel “Jaish-ul-Hind” on which a post had appeared on 27.02.2021 claiming responsibility for the Antilia terror scare, has been resolved by the Special Cell, Delhi Police, and that, the mobile phone number linked with the said Telegram Channel was found to be used from within the premises of Tihar Jail; and that as a Cyber Security Expert, he too had been following a Telegram Channel with a similar name, since the time a blast had occurred outside the Israel Embassy in New Delhi on 29.01.2021. After sharing the said information, he was asked by the CP, whether he could give such a report in writing; that since the work was confidential and was being done by the Special Cell, Delhi Police, he stated that it would not be proper on his part to give any report in writing in this regard. He has stated that the CP told him that it was a very important matter and that he should be giving the said report and that the CP told him that he would talk to the IG, NIA, in this

regard. He has stated that as per the insistence of the CP, he prepared a report on his laptop computer, sitting in the CP office. The said report was in one paragraph and was shown to the CP. After going through the report, the CP asked him to insert the Poster that had appeared on the Telegram Channel “Jaish-ul-Hind” claiming responsibility for the Antilia terror scare. He was also told by the CP that the IG, NIA, was expected shortly and that he would like to show the said report to him. According to the said witness, he accordingly modified the said report and inserted the Poster that had appeared on the Telegram Channel and mailed the said report to the official email of the said CP. Thereafter, the CP asked him how much was to be paid for the services rendered by him, to which, he replied that he was not expecting any payment, to which, the CP expressed that he had done excellent work and deserved payment for the services rendered. Pursuant to which, the CP called his Personal Assistant (‘PA’) and directed the PA to pay him Rs.3,00,000/-. He has stated that when the PA left the chamber, the CP called the PA

back and directed the PA to pay him Rs. 5,00,000/-. He has stated that he had told the CP that the amount was too much, however, the CP insisted that he deserved the same for the services rendered. He has stated that accordingly, he received cash of Rs. 5,00,000/- from the PA of the CP, in his presence.

7.10 As far as the report given by him to the CP is concerned, the said witness has further stated that he had fetched the IP address linked with the Telegram Channel “Jaish-ul-Hind” on 26.02.2021 at 15.28 hrs., whereas, the Poster claiming the responsibility of the Antilia terror scare had appeared on 27.02.2021. He has further stated that he was asked as to why he was following the Telegram Channel “Jaish-ul-Hind”, a day prior to the appearance of Poster claiming responsibility for the Antilia terror scare, to which, he had given clarification that the Telegram Channel “Jaish-ul-Hind” that was identified and resolved by him was different from the one on which the Post had appeared. He has further stated that the one resolved by him had

only 3-4 members and there was no Poster related to Antilia terror scare on that Channel. He has further stated that the Telegram Channel “Jaish-ul-Hind” on which the Poster appeared was infact resolved by the Special Cell, Delhi Police and not by him, however, when he shared his input with the Special Cell, Delhi Police, it came to light that the IP address pertaining to both Channels were found to be linked with the same virtual number +191xxxxxxxx linked to TextNow App, which was further resolved by the Special Cell, Delhi Police with TextNow and found linked with Airtel number 931xxxxxxxx, which was found to be operated within the premises of Tihar Jail. He has further stated that he was asked whether the report dated 09.03.2021 given by him to CP regarding resolving Telegram Channel “Jaish-ul-Hind” was correct, to which, he has stated that original report prepared by him was very short and did not contain the Poster claiming responsibility for Antilia terror scare and the report now shown to him was modified by him as per the directions of the CP. He has further stated that he does not know

how the said report got leaked to the media, as, when he handed over the report to the CP on 09.03.2021, he had conveyed to the CP that the information was very confidential and that the Special Cell, Delhi Police was still working on the input and that he was shocked to see the details appearing in the newspaper the next day and was very upset about the same.

7.11 The said statement of payment of Rs. 5,00,000/- is corroborated by Joseph D'Silva, who looked after the personal work of the CP. He has stated that CP called him and initially asked him to give Rs. 3,00,000/- and thereafter, the CP asked him to add another Rs. 2,00,000/- and accordingly, he gave Rs. 5,00,000/- in a paper bag to Ishaan Sinha, a Cyber Expert. He has stated that the said amount was withdrawn from the SS Fund. Why such a huge payment was made to the said witness i.e. Cyber Expert, what was the interest of the CP, is a grey area, for which there are no answers.

7.12 Be that as it may, for the first time, after filing a detailed investigation report, NIA is now trying to link the appellant with the Scorpio vehicle (laden with gelatin sticks), that too, during the course of the submissions, when the NIA was questioned. We are afraid that the NIA has not done indepth investigation with respect to the same i.e. as to with whom Sachin Waze had conspired with, for parking the Scorpio vehicle laden with gelatin sticks near a prominent businessman's residence. As noted above, Sachin Waze could not have done it by himself. There has to be two or more persons to attract the offence of conspiracy. There are several questions, which are unanswered by the NIA, with respect to the case pertaining to parking of the Scorpio vehicle laden with gelatin sticks. We hope and trust, that NIA, in right earnest, will investigate this aspect since further investigation under Section 173(8) is pending.

7.13 Now coming to the circumstance relied upon by the prosecution, as far as the appellant's role in the murder of

Mansukh Hiren is concerned, the prosecution has relied on several circumstances, which according to them, clearly point to the complicity of the appellant in the alleged crime.

7.14 The first circumstance relied upon by the prosecution is, that the appellant met Sachin Waze on **28.02.2021** at Malabar Hill Police Station for about 30-40 minutes and thereafter, together they travelled in one car from Malabar Hill Police Station to Worli Sea-face, where again they stood talking for about 20-25 minutes. It is the prosecution case that the appellant, a retired police officer, met Sachin Waze at the Malabar Hill Police Station, though there was no reason for him to be there. In this regard, learned ASG relied on the statements of PSO Prasanjeet Sawdekar, working with the appellant to show that the appellant and Sachin Waze met on 28.02.2021 for about 30-45 minutes at the Malabar Hill Police Station and thereafter, the appellant and Sachin Waze travelled in one car, towards Worli

Sea-face, where again they got down and started talking for about 20-25 minutes. The same is reiterated by the appellant's driver-Ulhas Shirsole, and another PSO of the appellant, Vikas Bangar. Mr. Ponda, learned senior counsel for the appellant submitted that the appellant met Sachin Waze for a reason; (i) that the Ex-Home Minister of Maharashtra had called Sachin Waze in the last week of February 2021 and had given him an ultimatum to collect an amount of Rupees Hundred Crores from various bars, restaurants and pubs, across Mumbai and had allegedly asked him to hand over the extorted money within one week, which period was expiring on 03.03.2021; (ii) that the Ex-Home Minister had threatened Sachin Waze that if he failed to follow his direction, he would take legal action against him by arresting him in a false case and remove him from service; (iii) as Sachin Waze was afraid, he met the appellant for the same. In this regard i.e with respect to the meeting of Sachin Waze with Ex-Home Minister on 24.02.2021 and 27.02.2021, Mr. Ponda relied on the statements of PC-Pandit Ramesh Banjara, PN-Rajendra Ganpath Jadhav and

API-Prakash Krishna Howal, so also the statements of KW-1 recorded under Sections 161 and 164 of the Cr.P.C.

7.15 First and foremost, it is pertinent to note that the meetings dated 24.02.2021 and 27.02.2021 are post the finding of the Scorpio vehicle laden with gelatin sticks. Admittedly, none of these witnesses were present in the meeting nor are they alleged to have heard the conversation between Sachin Waze and the Ex-Home Minister. *Prima facie*, the meeting with the Ex-Home Minister cannot be said to be unusual, as Sachin Waze was the Investigating Officer of an important case, at the relevant time. At the highest, the statements relied upon by the learned senior counsel show that Sachin Waze had visited the Home Minister's residence. Admittedly, none of them have spoken about the conversation that took place between Sachin Waze and the Ex-Home Minister. This is the defence of the appellant, which will have to be considered at the stage of trial and not at the stage of bail. Thus, the defence of the appellant that he was

called by Sachin Waze to Malabar Hill Police Station, for disclosing to him the threat given to him by the Ex-Home Minister, cannot be considered, while considering the appellant's plea for bail. It is the appellant's defence, to be tested at the time of trial. According to KW-13, the appellant told him to inform Sachin Waze that he should call the appellant, pursuant thereto, Sachin Waze and the appellant met. The fact remains that the appellant, a retired police officer had a closed-door meeting with Sachin Waze at Malabar Hill Police Station and though he was not concerned with any of the cases i.e. either pertaining to the Scorpio vehicle laden with gelatin sticks or the missing vehicle of Mansukh Hireen, they (appellant and Sachin Waze) travelled together in one car from Malabar Hill Police Station to Worli Sea-face, where again they get down and were talking for about 20-25 minutes. The same has been stated by several witnesses including KW-13, PSO Prasanjeet Sawdekar and others.

7.16 The second circumstance according to the prosecution is, the visit of the appellant to the CIU Office, Mumbai on **02.03.2021**, where the appellant and Sachin Waze met the CP, Mumbai in his office and thereafter, the appellant and Sachin Waze met separately in Sachin Waze's cabin, for about 10 minutes and then left. According to the prosecution, the appellant, a retired Police Officer, had no reason to visit the CP Office. Learned ASG submitted that it is a matter of record that on the same day, Mansukh Hiren was also present in the CP Office, and Sunil Mane (A-5, a co-conspirator) was also present in the CP Office. It is alleged by the prosecution that on the said day, the appellant entered into a criminal conspiracy with Sachin Waze and Sunil Mane for eliminating Manuskh Hiren. The statement of PSO-Prasanjeet Sawdekar reveals that on 02.03.2021, he accompanied the appellant to the CP Office at about 12:00 hrs; that the appellant went to meet the CP; that after 15-20 minutes, the appellant came down and went to CIU to meet Sachin Waze;

that he followed the appellant to the Crime Branch Building, however, the appellant asked him to wait down; that after 10-15 minutes, the appellant came down with Sachin Waze. It is also pertinent to note that the statement of ACP Alaknure reveals, that when he visited the CP's Office to meet the DCP on 05.03.2021, he had seen the appellant coming out of the CP's chamber. The reason for the appellant, a retired police officer, to be in the CP office including the CP's chamber, is not forthcoming. *Prima facie*, the fact remains that the appellant was present in the CP Office on 02.03.2021 and 05.03.2021, for albeit no plausible reason. No plausible reason is also spelt out by the learned senior counsel for the appellant for the presence of the appellant in the CP Office.

7.17 Mr. Ponda learned senior counsel for the appellant vehemently submitted that the question of doing away with Mansukh Hiren would not arise, inasmuch as, the statement of Advocate K.H. Giri would show the mental state of Mansukh

Hiren i.e. he was not stressed, was composed and cooperative. It is the case of the prosecution that meetings between Sachin Waze and appellant were held on 28.02.2021 and 02.03.2021 to eliminate Mansukh Hireen, as Mansukh Hireen was a weak link and if arrested, he would expose Sachin Waze. According to Mr. Ponda, the statement of Advocate K. H. Giri would show that Mansukh Hireen had met him on 02.03.2021 and that he was willing to cooperate with Sachin Waze and as per Sachin Waze's advice, was ready to file a complaint for the harassment faced by him from media and police with respect to his stolen car, and which was subsequently found parked outside Antilia building, laden with explosives. It is submitted that Advocate K. H. Giri's statement would show that there was no enmity between Mansukh Hireen and Sachin Waze as on 02.03.2021, and Mansukh Hireen was fully cooperating and that he was a bold person, with no frustration visible on his face. A perusal of Advocate K. H. Giri's statement would show that on 02.03.2021, at about 13:30 hrs., he got a call from Sachin Waze, requesting

him to advise and draft complaint of one of his friend Mansukh Hiren. He was informed that the vehicle of Mansukh Hiren was stolen from Eastern Express Highway and that Mansukh Hiren was being harassed by the police and the media because the said vehicle was found stationary near a prominent industrialist's residence. As recommended by Sachin Waze, he drafted a complaint of Mansukh Hiren, addressed to the Chief Minister of Maharashtra, Home Minister, Commissioner of Police, Mumbai and Thane. Advocate Giri has stated that Mansukh Hiren visited his office at 3:00 p.m. and left his office at 5:00 p.m. and that after reading the complaint, Mansukh Hiren was satisfied, pursuant to which, he obtained his signature on the same and asked him to deliver the same to the concerned authorities. He has stated that after he spoke to Mansukh Hiren, he found Mansukh Hiren to be a bold person with no frustration of any kind on his face. He has stated that whilst giving the instructions, Mansukh Hiren never took the name of NIA or any other investigating agency other than the State Police.

7.18 Mr. Ponda, learned senior counsel for the appellant submitted that having regard to Advocate K. H. Giri's statement, the question of appellant conniving with Sachin Waze did not arise. This well could be Mr. Giri's perception about what he perceived when he interacted with Mansukh Hiren. It could well be, because Mansukh Hiren felt that Sachin Waze was trying to help him, by giving a lawyer. It is pertinent to note, that the NIA, during search of Sachin Waze's Office, seized one letter i.e. the notice prepared by Advocate Giri. Advocate Giri, after perusing the said seized letter, has in his statement stated that the contents of the complaint letter drafted by him were edited by Sachin Waze and as such, were not in the original draft. It appears that 7 paras of the said letter written by Advocate Giri were edited by Sachin Waze. Advocate Giri has further stated that the said edited paras were never stated by Mansukh Hiren.

7.19 Another circumstance alleged by the prosecution against the appellant is that Sachin Waze had brought a bag

containing money in his car to the P.S. Foundation compound at Andheri on **03.03.2021** and had handed over the same to the appellant. The said P.S. Foundation is, admittedly, a foundation run by the appellant. It is the prosecution case that the said bag brought by Sachin Waze contained cash and was transferred by Sachin Waze from his car to the appellant's car. According to the prosecution, money was given to the appellant for executing the murder of Mansukh Hiren. KW-13, in his statements recorded, both under Sections 161 and 164, has stated that on 03.03.2021, around 20:00 hrs. to 21:30 hrs., Sachin Waze had come to the appellant's P.S. Foundation Office; that he saw the two talking on the side; that Sachin Waze handed over one bag from the boot of his SUV car to KW-13 to keep in appellant's car, saying that the bag contained appellant's clothes; that while transferring the bag, the zip of the bag being partially open, he saw bundles of Rs. 500/- notes in the said bag and found it heavier than a bag containing clothes. KW-13 has stated in his statement that Sachin Waze noticed that he had seen the bag and hence, had threatened

him with dire consequences if he opened his mouth. KW-13 has further stated that when he disclosed the same (threat given by Sachin Waze) to the appellant, the appellant told him not to take it seriously, as Sachin Waze was in the habit of joking.

7.20 According to KW-13, Sachin Waze was present at P.S. Foundation between 20:00 hrs. and 21:30 hrs. Another witness, PSO-Prasanjeet Sawdekar has *prima facie*, corroborated the statement of KW-13, that on 03.03.2021 at about 21:00/21:30 hrs., when he was waiting down at the P.S. Foundation Office, Sachin Waze arrived there and met the appellant; that after speaking with the appellant for about 5-10 minutes, Sachin Waze opened the boot of his Prado vehicle and the appellant told KW-13 to transfer a bag from Sachin Waze's vehicle; after keeping the bag, Sachin Waze is stated to have left.

7.21 Although, much capital is made by the learned senior counsel for the appellant, that the said witness had not disclosed

about threat given to KW-13/the zip being open, it is not necessary to go into the same, inasmuch as, it would depend on how far this witness was from KW-13. Suffice to state, that this witness has corroborated KW-13 with regard to Sachin Waze having come to P.S. Foundation to meet the appellant and that a bag was transferred from Sachin Waze's car to the appellant's car. According to Mr. Ponda, the said statements of KW-13 and Prasanjeet Sawdekar, who corroborates KW-13, is contrary to the statements of some other police officers as well as the CDR records relied upon by the prosecution. He submitted that some of the police officers i.e. PC-Sameer Gawkar and PC-Pankaj Bhosle have stated that Sachin Waze was present in the CIU office, Crawford Market on 03.03.2021 during the time, the prosecution has alleged that he was at the P.S. Foundation at Andheri. It is also submitted that the CDR records also do not corroborate the timings mentioned by KW-13 and PSO Prasanjeet Sawdekar, with respect to the presence of Sachin Waze at the P.S. Foundation, Andheri. He submitted that the CDR records of

Sachin Waze of 03.03.2021, relied upon by the prosecution, to the contrary, show that Sachin Waze was at the CIU office, Crawford Market at about 20:35 hrs.; at Malabar Hill at 20:47 hrs., and at 21:55 hrs. at Bandra Worli Sea Link, and near Santacruz at 22:16 hrs. After Santacruz, comes Andheri, where the P.S. Foundation Office is situated. It is the prosecution case that after reaching Santacruz, Sachin Waze switched-off his mobile, and hence there are no CDRs after that. No doubt, there is some discrepancy with regard to the time, but what cannot be lost sight of is, that there are categorical statements of the witnesses i.e. KW-13 and Prasanjeet Sawdekar that they saw Sachin Waze transferring one bag into the appellant's car and that, one of the witness i.e. KW-13 has stated that the said bag contained cash. What also cannot be lost sight of is, that the incident had taken place on 03.03.2021, whereas, the statements of witnesses were recorded on 12.08.2021 and 26.06.2021 respectively i.e. after about 3 months. Hence, 1 to 1½ hours, here and there, *prima facie*, would not oust the prosecution case.

Mr. Ponda also submitted that even if it is assumed for the sake of argument, that Sachin Waze gave a bag containing cash to the appellant, the said cash was given as Sachin Waze apprehended that he would be arrested at the behest of the Ex-Home Minister, pursuant to the threats given by him, if the amount of Rupees Hundred Crores was not collected and that the said amount was given for getting him released on bail. This is the defence of the appellant and cannot be looked into as this stage.

7.22 The next circumstance alleged by the prosecution is that the appellant facilitated the escape of Manish Soni (A-9) alongwith Santosh Shelar (A-6) to Nepal, to avoid arrest and thereafter, helped Manish Soni (A-9) flee from Mumbai to Dubai, through Santosh Shelar (A-6). Mr. Ponda submitted that a perusal of the documents and statements would reveal that Manish Soni's (A-9) tickets were not booked by the appellant but were booked by Santosh Shelar's (A-6) daughter.

7.23 Mr. Ponda submitted that as far as the allegation that the appellant facilitated the escape of Santosh Shelar (A-6) and Manish Soni (A-9) from Mumbai to Nepal, after the murder of Mansukh Hiren is concerned, there is not a single witness who speaks about the role of the appellant in the commission of the said act. He submitted that even as far as the allegation that the appellant facilitated the escape of Manish Soni (A-9) from Mumbai to Dubai, through Santosh Shelar (A-6) is concerned, the statement of Santosh Shelar's daughter-Siddhi Shelar shows that she had booked the tickets for Manish Soni (A-9) from Mumbai to Dubai, at the instance of her father. In this context, learned senior counsel relied on the statement of Siddhi Shelar, daughter of Santosh Shelar (A-6).

7.24 We may note, that it does not appear to be the prosecution case that the appellant booked any tickets facilitating the escape of the co-accused. A perusal of the charge against the appellant is that he directed Santosh Shelar to flee from Mumbai

to Nepal alongwith his henchmen and not that the appellant booked the tickets. No doubt, the tickets were booked by Santosh Shelar's daughter, however, what cannot be lost sight of, is, that Santosh Shelar (A-6) was closely associated with the appellant and there are CDRs to that effect. Although Mr. Ponda contended that Santosh Shelar (A-6) was known to the appellant, as earlier, he was his informer and as such, the said circumstance i.e. being in touch with Santosh Shelar (A-6), cannot be said to be incriminating, we are afraid that at this stage, we cannot accept the said submission, considering the role of Santosh Shelar (A-6), who was closely associated with the appellant in the commission of the said crime. It is the prosecution case, that Santosh Shelar (A-6) was one of the assailants, who smothered Mansukh Hiren and disposed of his dead body alongwith other co-accused.

7.25 The next circumstance alleged by the prosecution is that the appellant, on A-9-Manish Soni's return to Mumbai from Dubai on 08.05.2021, got him (Manish Soni) quarantined in a

hotel called Sai Leela Grand at Andheri, operated in benami by the appellant. According to the prosecution, the said Hotel belonged to the appellant's wife and that she had leased out the first and the second floors to Ravindranath Shardaprasad Singh and Prakash Vithhal Poojari, who were running the said hotel, under the name and style of Hotel Sai Leela Grand. Mr. Ponda, submitted that the said circumstance cannot be said to be incriminating. Learned senior counsel for the appellant submitted that the said hotel was leased out in 2018 and that merely because Manish Soni (A-9) stayed in the said hotel, cannot be an incriminating circumstance against the appellant. He submitted that admittedly, the said hotel was not run by the appellant nor his wife. He submitted that the said hotel is registered with the Mumbai International Airport and was included in the Airport Quarantine Hotels, pursuant to which, the appellant was kept in the said hotel. We may note, that during this period, whenever passengers landed from abroad, they could choose the hotel which was in the list of Quarantine Hotels, and hence, it is not as

if Manish Soni (A-9) was sent there by the Authorities. It was the choice of the passengers. It is pertinent to note, that co-accused Manish Soni, in his 164 statement, stated that when he reached Mumbai, as per airport protocol, he had to stay in quarantine on his own expenses for 7 days. Hence, he called Santosh Shelar, who in turn, had given him the details of the hotel for quarantine, for filing up the BMC Form.

7.26 A perusal of the statement of Ravindranath Singh shows that on 09.05.2021, A-9 (Manish Soni) came to stay in his hotel and that he had seen him on 11.05.2021, when Santosh Shelar (A-6) came to meet Manish Soni (A-9) in the said hotel. He has stated that Manish Soni (A-9) stayed in his hotel for about 7 days and that during the said stay, Santosh Shelar (A-6) had come to the hotel to meet Manish Soni (A-9), two to three times. He has stated that Santosh Shelar was pressurizing them to let Manish Soni go home before the end of quarantine, however, Manish Soni was permitted to leave only after his Covid RTPCR

test and end of his quarantine period. He has further stated that when Manish Soni checked out of the hotel, he did not pay the charges and when asked about it, he said that Santosh Shelar (A-6) would pay the hotel charges.

7.27 Prakash Vitthal Poojari, in his statement has said that he knows the appellant for about 15 years and Santosh Shelar for about two years. He has stated that when he and his business partner Ravindranath Singh were looking for a place for hotel, their acquaintance Ajay Sharma, who is always with the appellant, suggested to them the said place i.e. the first and second floor in the Raylon Arcade Building, Kondiwada, R. K. Temple Road, J. B. Nagar, Andheri (East), Mumbai-59, standing in the name of Smt. Swikriti Pradeep Sharma, wife of the appellant. He has stated that on 17.04.2018, Ravindranath Singh and he took on rent the first and second floors of the Raylon Arcade Building standing in the name of the appellant's wife for Rs. 1,13,000/- for running a hotel. He has stated that their Hotel Sai Leela Grand

was registered with the Mumbai International Airport and was also included in the list of Airport Quarantine Hotels. He has stated that his partner Ravindranath Singh and he would regularly sit on the Sofa near the hotel reception around 11:00 a.m. everyday, and hence, he knew who is coming to the hotel. He has stated that on 09.05.2021, a person named Manish Soni (A-9) came to stay in Sai Leela Grand Hotel. He has further stated that Santosh Shelar had come to meet Manish Soni in the hotel, on 11.05.2021. He has stated that Manish Soni stayed in their hotel for about 7 days and that during those seven days, Santosh Shelar had come to the hotel to meet Manish Soni, two to three times. He has stated that Santosh Shelar pressurized them to let Manish Soni go home before the end of his quarantine period but their Hotel Manager released Manish Soni only after doing RTPCR test and end of his quarantine period. He further stated that when Manish Soni checked out of the hotel, he did not pay the hotel rent. He has stated that when the hotel manager asked him about the hotel rent, he said that

Santosh Shelar will pay the hotel rent. He further stated that when Santosh Shelar met him, he told him that he would pay Manish Soni's hotel rent himself. He has stated that on 16.05.2021, Manish Soni left, without paying the hotel bill and after that, neither Santosh Shelar nor Manish Soni paid the hotel bill.

7.28 Co-accused -Manish Soni in his confessional statement recorded under Section 164 Cr.P.C, has stated how he knew Santosh Shelar for 6 years; that Santosh Shelar asked him to purchase one simple mobile phone and two activated new sim cards on 01.03.2021, pursuant to which, he purchased and gave him the same; how the incident of 04.03.2021–murder of Mansukh Hiren took place; the role of Santosh Shelar and others in the same; how he escaped to Nepal with Santosh Shelar; that the trip was sponsored by Santosh Shelar; how Santosh Shelar arranged his flight tickets to Dubai. Manish Soni in his confession

has further stated that when he returned to Mumbai, as per the airport protocol, he was required to stay in quarantine on his own expense for 7 days; hence, he called Santosh Shelar, who gave him the details of the hotel for quarantine for filling up the BMC form. He has stated that Santosh Shelar bore the expenses of that hotel. According to Manish Soni, during his quarantine, in the Hotel Sai Leela Grand, Santosh Shelar came to meet him on 09.05.2021 and 11.05.2021. He has further stated that on 13.05.2021, when he was taking tea, the appellant came in his car and asked him if Santosh Shelar had come there. As he replied in the negative, the appellant left.

7.29 KW-13 in the 161 statement, has stated as under:

“I say that Raylon Arcade building has six floors. The 1st to 4th Floor in the said building is owned by Sh. Pradeep Sharma, and the same is registered in the name of his wife Smt. Swikriti Sharma. The 4th floor is used as registered office of P.S. Foundation and the remaining first and second floors are given on rent to Sh.Pujari and

Sh.Singh who run Hotel Sai Leela Grand from the said premises. The said hotel is being used as a quarantine facility for air passengers arriving at Mumbai international airport. One person named Manish Soni had stayed in the said hotel in the second week of May 2021 and _____ acquainted with Manish Soni during the said period.”

7.30 The statement of KW-13 reveals that Santosh Shelar (A-6) was an influential person and was very close to the appellant and a regular visitor of the P.S. Foundation and that during Navratri celebrations, when banners of P.S. Foundation were put up, they contained the photograph of Santosh Shelar. KW-13 has further stated that Santosh Shelar has been a regular contact person of the appellant and had helped the appellant during the elections at Nalasopara by organizing manpower for election rallies of the appellant. According to KW-13, the appellant used to call Santosh Shelar through KW-13's phone during the period 28.02.2021 to March 2021, which is exactly

the period when Mansukh Hiren was eliminated. KW-13's statement also shows that Santosh Shelar was called by the appellant to his office many times and that many times Santosh Shelar was accompanied by another person Anand Jadhav (A-7).

7.31 The prosecution has also relied upon CDRs from 09.05.2021 to 22.06.2021 to show that the appellant and Santosh Shelar were continuously in touch with each other, after the murder of Mansukh Hiren. KW-13 has further stated that the appellant would tell him what type of call to make whether regular or WhatsApp, to Santosh Shelar (A-6), who allegedly eliminated Mansukh Hiren with the help of other accused. He has given the details as to on which phones and how calls have been made by the appellant to Santosh Shelar. It is also pertinent to note that Santosh Shelar had asked Manish Soni to purchase one simple mobile phone and two activated new sim cards on 01.03.2021, which he purchased and handed over to Santosh Shelar. One of the sim card was handed over by Santosh Shelar

to the appellant, which was used by the appellant to make calls to Santosh Shelar. The explanations offered by the appellant are *prima facie* his defences and will have to be tested during his trial.

8 Considering the material on record, the same *prima facie*, points to the complicity of the appellant in the murder of Mansukh Hiren. The possibility of the appellant, a retired Police Officer, having clout, tampering with the witnesses, cannot be ruled out. It is also pertinent to note that the appellant was facing prosecution for the offences punishable under Sections 302, etc. in an encounter case. Although, the appellant was acquitted from the said offences, after a full-fledged trial, an appeal against acquittal of the said appellant has been filed by the State of Maharashtra which has been admitted.

9 Considering all that is stated hereinabove, this is not a fit case to enlarge the appellant on bail. Appeal is accordingly dismissed.

10 It is made clear that the observations made herein are *prima facie*, only for the purpose of deciding the appellant's prayer for bail and as such, the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this judgment.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.