

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) No. 832 of 2013

Mangesh @ Sonya S/o Bhimrao Chandurkar Vs. State of Mah.
through PSO, P.S. Rajapeth, Amravati City, Tah. & Dist. Amravati

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri Nilesh Samundre, counsel for the applicant
Ms. N. P. Mehta, APP for the State/non-applicant

CORAM : PRASANNA. B. VARALE, J.
DATE : DECEMBER 23, 2013.

Heard.

The applicant is before this court seeking his enlargement on bail in connection with Crime No. 243/2012 registered at Rajapeth Police Station, District Amravati for the offences punishable under Sections 147, 148, 149, 212, 307, 302 read with Section 120(B) of the Indian Penal Code. The report was lodged at the instance of Samata Devidas Khandare.

Perused the First Information Report and reply filed by the State. The learned APP made available the papers of investigation.

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Learned counsel for the applicant raised two grounds in support of his submissions for enlargement of the applicant on bail. Mr. Samundre, learned counsel submitted that the material collected by the investigating agency is inadequate to connect the applicant with commission of crime. He submits that there are contradictions in the versions of the complainant and the eye witnesses. He further submits that the complainant/informant is not referring either the presence of the applicant or any role attributed to the applicant. He further submitted that the complainant/informant referred the number of 4 motorcycles whereas the other witnesses stated that there were 6 motorcycles. He further submitted that as in the final recordings, the witnesses have not referred the role played by the applicant and in their additional statement, they stated about the role attributed to the applicant and as such, the version of the witnesses is not a truthful account of the incident. He further submitted that the applicant is arrested on 1-8-2012 and since then he is behind the

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bars. He submitted that as the applicant is a young boy and was recently married prior to the incident and is the sole bread-winner of the family, keeping him behind the bars for indefinite period would be nothing but a detention pre-trial. Shri Samundre, learned counsel further submitted that as there is no progress in the trial, the applicant is deprived to a speedy trial guaranteed to him. On this counts, the learned counsel for the applicant prays for allowing the application.

Learned APP opposed the application. On perusal of the material, it reveals that at the initial stage, there is neither presence of the applicant nor any role attributed to the applicant. Needless to state that the report was lodged on the information received by the complainant. It is settled position in the law that FIR is not encyclopedia giving a minor details in mathematical precision by the complainant/informant. Perusal of the material further shows that the statements recorded by the investigating agency of the eye witnesses not only

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referred to the presence of the applicant, but it revealed that the applicant was armed with a deadly weapon like sword. The statement of the witnesses further reflect that the applicant gave blow with the weapon sword to the victim. The statement further reveals that the witness, who has seen the incident referred to the presence of the applicant, role played by him. It is further stated that due to the assault, the witnesses were apprehended and they started running away from this point. In my opinion, such a reaction of a witness cannot be said to be a not only reaction, but the fact remains that these witnesses stated about the presence of the applicant, role played by the applicant, weapon carried by the applicant, use of the weapon and giving blow on the vital part of the body of the victim. The other material further shows that the Autopsy Surgeon has referred to 22 injuries caused to the victim. The investigation material further reveals that the weapon sword was seized at the instance of the applicant.

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The learned counsel for the applicant made an attempt to submit that the seizure shown against the applicant is false. This is not a stage to consider either these submissions or the submission of the learned counsel that there is some contradiction in the statements of the witnesses. The stage of assessing the evidence or weighing the evidence or even scrutinizing the evidence is yet to arrive. For consideration of prayer of the applicant to enlarge him on bail, this court is expected to see the *prima facie* material against the applicant and not the assessment of the material as the learned counsel expects of. At the cost of repetition, suffice it to say that there is more sufficient material against the applicant showing his involvement in the present crime in question.

The other ground raised by the learned counsel is that there is no progress in the trial. On the backdrop of this fact, the learned APP, on instructions, submits that trial is in progress, witnesses are examined by the learned trial court and

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some of the witnesses are before the trial court for their examination on today and tomorrow. On the backdrop of this fact, I find no merit in the submissions of the learned counsel that the trial is being protracted or there is no progress in the trial. Thus, both the grounds i.e. on merit as well as on the ground of progress in the trial, the case of the learned counsel fails. Thus, in my opinion, this is not a fit case to enlarge the applicant on bail. In the result, the application being meritless, deserves to be rejected and the same is accordingly rejected.

JUDGE

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