

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3223 OF 2015
[Sayed Amjad s/o Syed Maqsood Vs The State of Maharashtra]
AND
CRIMINAL APPLICATION NO. 3952 OF 2015
[Shriniwas s/o Narsinghrao Navhatte vs The State of Maharashtra]

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

Court's or Judge's orders

Shri P.R.Katneshwarkar, advocate for applicant in Appln.3223/2015
Shri P.R.Adkine, advocate for applicant in Appln.No.3952/2013
Smt. S.G.Chincholkar, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.
DATED : 1st AUGUST, 2015

PER COURT :-

1] These two applications can be disposed by this common order, since both arise out of Crime No. 18 of 2015, registered with police station Bhokar, District Nanded, which was initially registered for the offence punishable under Section 392 of the Indian Penal Code and subsequently the offence punishable under Section 395 of the Indian Penal Code is also added.

Criminal Application No. 3223 of 2015 is filed by Syed Amjad s/o Syed Maqsood. This is an application under Section 439 of the Code of Criminal Procedure for regular bail.

Criminal Application No. 3952 of 2015 is filed by Shriniwas s/o Narsinghrao Navhatte and it is filed under Section 438 of the Code of Criminal Procedure for anticipatory bail since he is apprehending his arrest in connection with the afore said crime.

2] I have heard Shri P.R.Katneshwarkar, learned counsel for applicant in Criminal Application No. 3223 of 2015 and Shri P.R.Adikine, learned counsel for the applicant in Criminal Application No. 3952 of 2015. Both the applications are opposed by Smt. S.G.Chincholkar, learned Additional Public Prosecutor for the respondent/State.

3] Investigation is over and charge sheet is also filed before the court of law.

4] The first information report is lodged by Ratnakant Shahane on 18.2.2015. The first information report would disclose that he is a Jeweller by profession. He runs a jewellery shop at Bhokar by name "Tirupati Jewellers". He resides at Mukhed. Daily he travels from Mudkhed to Bhokar and after the shop is closed he use to return Mudkhed from Bhokar. Normally he use to travel by two wheeler.

On 18.2.2015, after the end of the day, he collected Rs.30,000/-, the daily collection of his shop and when he was returning to Mudkhed on his two wheeler, and when his two wheeler was in between Canal and Menka village, he received dash from his backside, which was given by a four wheeler, due to which he fell down. It is his specific assertion in the first information report that, that time, time was 5.30 in the evening and everything was visible to him. He further asserts that after giving dash the said motor car turned around and came near to him. Three persons alighted from the said motor car and out of those three, one snatched away a bag containing cash and his mobile.

During the course of the investigation, two supplementary statements of the first informant are recorded. The first supplementary statement is recorded on 19.2.2015, wherein he disclosed that the bag was containing golden ornaments also along with the cash. It is pertinent to note that in the first information report or in the supplementary

statement recorded immediately on 19.2.2015, the first informant did not take the name of any of the accused.

From the charge sheet, it is clear that his second supplementary statement was recorded on 1.3.2015. Thus the said supplementary statement is recorded after the period of 13 days from the registration of the crime. In this supplementary statement, the applicant has disclosed the names of all the accused persons including the present applicants.

So far as applicant Shriniwas is concerned, it is stated by the first informant in his second supplementary statement that he got information about the applicant Shriniwas from the police that he has given tip to the remaining accused persons.

The learned Additional Public Prosecutor was unable to point out any other incriminating material against applicant Shriniwas. She submits that incriminating material against applicant Shriniwas is the statement of the accused person. Statement of co-accused cannot be termed as admissible piece of evidence.

5] Further, Local Crime Branch on 28.2.2015 issued a notice to applicant Shriniwas that he should attend the Local Crime Branch. Accordingly, it appears that applicant Shriniwas appeared before the Local Crime Branch and Local Crime Branch has also recorded his statement. Thus, as a dutiful citizen he has obeyed the direction of the investigating officer to attend and join the investigation.

Further, even according to the entire prosecution case, allegation against applicant Shriniwas is that he has given tip to the other accused persons, however, even for the said accusation, nothing is available on record. In that view of the matter applicant Shriniwas has made out a case for anticipatory bail.

6] In so far as applicant Syed Amjad in Application No. 3223 of 2015 is concerned, according to the learned Additional Public Prosecutor, his name is taken by the first informant. It is her further submission that at his behest mobile phone of the first informant is recovered when his statement under Section 27 of the Evidence Act is recorded. She also submitted that from the house of applicant Syed Amjad, certain golden ornaments are seized. Therefore, she prayed that his application is required to be rejected.

7] As observed in the preceding paragraph, till 19.2.2015 name of the applicant was not appearing in the prosecution case. It firstly surfaced on 1.3.2015 when the second supplementary statement of the first informant was recorded. It is worth to note that in the first information report itself the first informant is very specific that at the time of the incident, there was sufficient light, it being time 5.30 in the evening, thus he was having ample opportunity to observe the present applicant. In spite of that, till 1.3.2015 the applicant's name does not surface in the prosecution case.

During the course of the investigation, the investigating officer, in accordance with law, has conducted the test identification parade. The panchanama of the identification parade clearly shows that the first informant has failed to identify the present applicant Syed Amjad.

In so far as the recovery of certain gold ornaments from the house of applicant Syed Amjad is concerned, it is to be noted that the search of the house of the applicant was taken on 24.2.2015. The arrest panchanama of the applicant Syed Amjad shows that he was arrested on 25.2.2015. Thus, the status of accused was bestowed upon applicant Syed Amjad by the investigating officer on 25.2.2015. However, if the house search panchanama is seen, then it is clear that on 24.2.2015 i.e. one day prior to the

arrest of the present applicant Syed Amjad the investigating officer has recorded that he has searched the house of accused Syed Amjad. On 24.2.2015 applicant was not arrested, he was not an accused on that day, in spite of that, investigating officer on the said day has branded Syed Amjad as an accused. Matter does not stop there, certain ornaments are recovered and/or seized from the house of applicant Syed Amjad. For the reasons best known to the prosecution, identification panchanama from the first informant in respect of those ornaments is not done that these are those ornaments belonging to the first informant. Such is the state of investigation in the present matter.

8] Further, in so far as the discovery of cell phone at the behest of the applicant is concerned, the recovery panchanama shows that the said recovery is from open space, to which the present applicant is not having any exclusive control in that behalf and much importance cannot be attached to said recovery.

Further, it is pointed out to this court that the accused persons who were identified by the first informant during the course of the identification parade, are already released on bail by the learned trial court.

Further, applicant Syed Amjad is having a clean past record is the submission of the learned Additional Public Prosecutor. That leads me to pass following order.

ORDER

- (i) Criminal Application No. 3952 of 2015 is allowed.
- (ii) Applicant-Shriniwas s/o Narsinghrao Navhatte be released on anticipatory bail, in the event of his arrest, in connection with Crime No. 18 of 2015, registered at Bhokar police station, District Nanded, for the offence punishable under Sections 392, 395 r/w 34 of the Indian Penal Code, on he executing P.R.bond of Rs.5,000/- with one solvent surety

in the like amount.

(iii) Criminal Application No. 3223 of 2015 is allowed.

(iv) Applicant, Syed Amjad s/o Syed Maqsood, be released on bail, in connection with Crime No. 18 of 2015, registered at Bhokar police station, District Nanded, for the offence punishable under Sections 392, 395 r/w 34 of the Indian Penal Code, on he executing P.R.bond of Rs.15,000/- with one solvent surety in the like amount.

(v) Both the Applications are disposed of.

(V.M.DESHPANDE, J.)

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