

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

CRIMINAL APPLICATION (BA) NO.77 OF 2015

Kamal Anoop Kharare

..vs..

**State of Maharashtra, thr PSO, PS, Ramdaspath, Akola, District
Akola**

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

Court's or Judge's order

**Shri S.D. Chande, counsel for the applicant.
Mrs. S.S. Jachak, APP for the State.**

**CORAM : PRASANNA B. VARALE, J.
DATE : MARCH 5, 2015**

Heard.

By the present application, the applicant is before this Court seeking his enlargement on bail in connection with Crime No.174 of 2014, registered with Ramdaspath Police Station, Akola, for the offences punishable under Sections 143, 147, 148, 149, 302 read with 120(B) of the Indian Penal Code.

Learned counsel for the applicant, by inviting my attention to the report, submits that the report was lodged on the basis of statement of Sagar who informed that on 17.11.2014 he proceeded to mobile shop

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2

along with his younger brother for recharge of the cellphone. The duo was followed by Kapil Sarwane, Shubham Paroche, Tilak Sarwan on one motorcycle, and Lakhan Agor and Piyakhare on another motorcycle. Lakhan and Piyakhare caught hold Yuvraj, and Kapil, who was armed with sickle, Shubham, who carrying an iron scale like material, while Sagar made an attempt to save his brother, the accused gave successive blows with weapons like iron road and sickle etc.. The victim fell down lying in pool of blood and assailants fled away from the spot. One Ashish Ingale, and Satish Ghongare, who were the eye witnesses, rushed to the spot of the incident. The victim was then shifted to a private hospital. Sagar, then refers to a prelude to the alleged incident of denial to hand over a cellphone to Vishal, brother of Kapil, by Sagar. He stated that on that issue, Yuvraj, was also participant in fight and blows exchange between Kapil Sarwan, Surun Kathane, and Vishal Sarwan. Thus, Sagar submitted that the accused were carrying grudge against Vishal and accordingly a plan was hatched to eliminate his brother Yuvraj.

3

Learned counsel for the applicant submits that in that detailed report lodged by Sagar, neither any role attributed to the applicant nor even remotely reference is made to the applicant. He submits that the investigating agency comes out with a case of allegation, that the applicant is the person, who hatched the plan, to eliminate Yuvraj, and the accused were acting under the directions of the applicant to give effect to the plan hatched. Learned counsel further submits that the applicant, who was arrested on 9.12.2014, approached learned Sessions Judge by filing an application on 20.12.2014. It came to be rejected on 8.1.2015 only on the basis of the statement of one Sumit Bhadele.

Learned counsel for the applicant submits that the statement of Sumit is general, vague, and ambiguous. He further submits that on such a material which can be termed as a weak material looking to it by any angle is wholly insufficient to connect the applicant with the alleged role. Learned counsel states that the applicant is behind the bars for sufficient period and now as the charge-sheet is filed, all

4

necessary materials are collected. He further submits that the applicant may not be treated behind the bars for further indefinite period on the basis of scanty and insufficient material.

Learned Additional Public Prosecutor vehemently opposes the application. Learned Additional Public Prosecutor admits that in the report neither any role nor any presence is spelled out of the applicant. She further submits that the material against the applicant is in the form of statement of Sumit. She further submits that the statement of Sumit gives a clear alternate of the fact that the applicant was the person who was the leader in the meeting attended by other accused and in that meeting a plan was hatched to eliminate Yuvraj. She, thus, placed a heavy reliance on the statement of Sumit in support of her submission. As the material on which the application was rejected by the learned Sessions Judge and on the heavy reliance placed by the learned Additional Public Prosecutor on the statement of Sumit, if the statement of Sumit is carefully perused, it reveals from the statement that, what emerges is, he

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states on 17.11.2014 the accused who are his neighbours are of the Walmik Community along with present applicant and the people of other community were gathered in front of his house. This gathering was discussing the issue of meeting scheduled in at place called Akhada and a plan was hatched to eliminate Yuvraj taking an extensive search of Yuvraj. Learned Additional Public Prosecutor vehemently submits that the applicant being the leader was giving direction to the other accused. If the statement is perused, Sumit is not referring to the applicant and other accused but he also refers to the members of the Community. He also refers that there was an open discussion. Thus, the statement cannot be picked up to lead to the conclusion that the accused and the applicant were only the members who were in the process of hatching of conspiracy and this was affair of that closed gathering of accused and the applicant.

Considering these aspects of the matter, in my opinion, the learned counsel for the applicant has made out a case for enlargement of the applicant on bail. There

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6

is submission of the learned counsel for the applicant. The apprehension of the State can be taken care of by imposing conditions upon the applicant.

In the result, the application is allowed. The applicant be released on bail on his furnishing P.R. Bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand Only) with one surety in the like amount on the following conditions.

i) The applicant to attend Ramdaspath Police Station, Akola, on every Sunday of the month from 09:00 a.m. to 12:00 noon and maintain diary of his attendance duly countersigned by the Police Station Officer, till conclusion of the trial.

ii) The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.

iii) The applicant to submit his residential address and contact numbers, such as phone/mobiles

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numbers, to the investigating agency.

iv) In case the applicant is moving out of the area of Ramdaspath Police Station, Akola, he shall take permission and inform the concerned Police Station about his visit to other place.

v) In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that the observations of this Court are for consideration of the prayer seeking enlargement on bail. As such, the learned Sessions Judge may not be influenced by these observations while conducting the trial and may proceed with the trial on its own merits and the material presented before it.

The application is disposed of as such.

JUDGE

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