

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

Cri. Application No. -----/2015 in Criminal Application (ABA) No.52/2015 with
 APPP No.119/2015

Rohan s/o Parmeshwar Jaiswal Vs. State of Mah.

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

Court's or Judge's
Orders.

 Shri S.A. Chaudhari, Advocate for the applicant.
 Shri Ahirkar, APP for the respondent.
 Shri Muhammed Ateeque, Advocate for assisting the
 prosecution.

CORAM : PRASANNA B.VARALE, J.
DATE : FEBRUARY 23, 2015.

Heard the learned counsel for the respective parties.

This is application at the instance of Shri Muhammed Ateeque, the
 learned Advocate for assisting the prosecution.

For the reasons stated in the application, the application is allowed in
 terms of Prayer Clause (2).

Criminal Application (ABA) No.52/2015

Heard Shri Chaudhari, the learned counsel for the applicant and Shri
 Ahirkar, the learned APP for the respondent/State.

This is an application filed by the applicant seeking protection in
 nature of pre-arrest bail in connection with Crime No.27/2015 registered at Pusad
 City Police Station apprehending his arrest for the offences punishable under
 Sections 143, 147, 148, 149, 307, 427 and 323 of the Indian Penal Code. Shri

Chaudhari, the learned counsel, invited my attention to report lodged at the instance of one Sayyad Shoeb Ali. He submitted that assuming that the report reflects some incidents on 23rd of January, 2015 though not admitting the same, the reference is to some unknown boys. Shri Chaudhari submits that the informant-complainant Sayyad Shoeb refers to one Vishal Ghate, Abhijeet Panpatte, a boy by name Pappya alias Pammy and two boys namely Jaiswal. The learned Counsel Shri Chaudhari for the applicant further submits that the applicant is falsely implicated in the crime on a wholly unsustainable material alleged against him. The learned counsel for the applicant then vehemently submitted that it is alleged that the incident took place on 23.1.2015 at about 6.00 p.m. Shri Chaudhari, by inviting my attention to the material placed on record namely the photographs at Annexure-II collectively submits that at the very time i.e. around about 5.00 p.m. onwards, the applicant was attending an engagement ceremony of his childhood friend. Shri Chaudhari, the learned counsel, submits that this ceremony was going on till late hours of the evening. He submitted that the other invitees who attended the engagement ceremony filed the affidavits to the effect that engagement ceremony was going on till 8.00 p.m. in the evening and the applicant was present in this ceremony throughout the ceremony. He further submits that the applicant is an agriculturist and also running a petty business. The submission of Shri Chaudhari is that the applicant would not cause any hindrance in the investigation and will extend his assistance to the Investigating Agency and for such assistance, the custodial interrogation of the applicant is not necessary.

The learned APP Shri Ahirkar and the learned counsel Shri Muhammed Ateeque assisting the prosecution vehemently opposed the application.

Shri Ahirkar, the learned APP, has made available the material collected by the Investigating Agency. Shri Ahirkar, the learned APP, submitted that the victim was severely injured due to the assault of fist blows, kick blows and an iron rod. The learned APP further submits that the statement of the victim Allarkha was recorded and in his statement he refers to the role played by the applicant. The learned APP thus opposes the prayer of the applicant.

I have gone through the material placed on record as well as the material collected by the Investigating Agency made available for my perusal by the learned APP.

The report lodged at the instance of Sayyad Shoeb Ali show that Shoeb Ali was working as LIC agent and colleague one Allarkha married to a girl from different religion. This fact is noted for the reason. The learned counsel assisting the prosecution vehemently submitted that this was one of the reasons of the assault, as this marriage was not approved by many of the persons in the society and as such, they were carrying a grudge. The report then refers to the incident which took place on 23.01.2015 in the evening at about 6.00 p.m. after the prayer (Namas) Sayyad and Allarkha had been to a place called "Nights Square". 10 to 15 boys were already on the spot. Apprehending some mischief, though this duo i.e. Sayyad and Allarkha wanted to leave the place, a boy from that group gave a blow on the head of Allarkha with an iron rod. Then it was followed by other boys. The hue and cry on the spot resulting in gathering of the people there. The assailants fled away from the spot. Allarkha was shifted to a private hospital, namely,

"Malpani Hospital" initially and subsequently was shifted to Life-line Hospital in I.C.U. Department. This is the report lodged at the instance of Sayyad Shueb Ali. On the perusal of the report, I find merit in the submission of Shri Chaudhari, learned counsel, to the effect that the report is silent on the identity of the applicant. The informant-complainant states that about the presence of one Vishal, Abhijeet and Pammy and refers that there were two boys namely Jaiswal. A statement is made in the report that when victim Allarkha was being shifted at Malpani Hospital, an inquiry was made by Sayyad about the assailants and Allarkha replied as the assailant was Karan. This reference assumes some importance for the reason that the complainant-informant himself states that being the resident of the same locality, he had an acquaintance with those boys who were on the spot and who were giving blows. Now, this Sayyad i.e. informant-complainant is not specific about the applicant and a vague reference is made to the boys by name Jaiswal. The victim Allarkha who is also from the same area and a colleague of the informant-complainant on a specific query made by Sayyad replies that the assailant is Karan. Though its true that the First Information Report is not an encyclopedia to give a graphic disclosure with its minute details but on the backdrop of the fact that the victim and informant-complainant held from the area of Pusad City and statement made by informant-complainant that he had an acquaintance with the boys who were assailants and on this backdrop neither he is giving identity of the present applicant specifically and the victim Allarkha, who refers the assailant Karan assumes some importance. Now, the learned APP though vehemently submitted that the statement of victim Allarkha refers to the name of this applicant, the statement of Allarkha is recorded after a period of month i.e. on 12th of February, 2015. Even if this statement is perused, he states that the

applicant with some heavy object gave blow on his head whereas Karan picked up a big stone and hit it on his head. In his statement, he concludes that it was Magesh Karan who made an attempt to kill him by hit of a stone.

The learned counsel for the applicant by referring to the material placed on record namely some photographs and affidavits submitted that at the relevant time the applicant was engaged elsewhere. It is also a settled position of law that at the time of consideration of an application seeking pre-arrest protection, it is not required to assess and weigh the material, on the backdrop of the submissions of the learned counsel for the applicant that the applicant was attending an engagement ceremony of childhood friend, the material is considered. The print of the photographs placed on record shows timing. The learned counsel for the applicant also invited my attention to the affidavits and particularly, the affidavit of the father of the boy whose engagement ceremony was attended by the applicant as well as the other invitees who attended the ceremony. Apart from the father who is retired personnel from a bank, the other invitees a Professor. Thus, the submission of the learned counsel for the applicant was engaged elsewhere at the very time of the alleged incident gets support from the documents placed on the record.

It seems that though the major part of the investigation is over, certain aspects of the investigation are still in progress. The reply filed by the State do not refer to any criminal antecedent to discredit the applicant. Thus, apprehension, if any of the State, can be taken care of, by imposing certain conditions on the applicant. The learned counsel for the applicant has made out a case for the

protection, as prayed for.

In the result, the application is allowed. The applicant be released on bail in Crime No.27/2015 registered with Police Station, Pusad, for the offences punishable under Sections 143, 147, 148, 307, 427, 323 of the Indian Penal Code on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five thousand only) with one solvent surety in like amount on following conditions :

- a] The applicant shall attend Pusad police station on 2nd and 4th Sunday of every month between 9.00 am to 12.00 noon till filing of the charge sheet and thereafter, as and when called by the Investigating Officer and co-operate the investigation agency.
- b] The applicant should maintain a diary of his attendance duly countersigned by the Investigating Officer/P.S.O.
- c] He shall not tamper with the prosecution witnesses/evidence and shall not cause any obstruction in the investigation of the offence.
- d] He shall not indulge in any other crime of similar nature.
- e] The applicant should not leave the jurisdiction of the trial Court without its prior permission.

In case of breach of the conditions, the prosecution agency to take necessary steps in accordance with the provisions of law.

JUDGE

Ambulkar