

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

Criminal Application [BA] No.83 of 2015

(Surendra Radheshyam Kesharwani

vs.

The State of Maharashtra, through PSO Panchpaoli, District Nagpur)

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

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Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : FEBRUARY 18, 2015.

Heard Mr. R.M. Daga, the learned Counsel for the applicant and Mr. S.M. Ghodeswar, the learned A.P.P. for the non-applicant/State.

By the present application, the applicant is before this Court seeking his enlargement on bail in connection with Crime No.295/2014, registered at Panchpaoli Police Station, Nagpur for the offences punishable under Sections 302, 307, 120-B read with Section 34 of the Indian Penal Code.

The report was lodged at the instance of one Anil Borkar. The report reflects the plight of a social activist. The wife of the informant namely Mrs. Arti Borkar, a lady active in social and political life, raised certain grievances against the illegalities of one Ravi Khante and Kesarwani. Because of the active steps of Mrs. Arti Borkar, the business of Ravi Khante and Kesarwani was closed. These two families namely Khante and

Kesarwani were carrying grudge against Borkar family. They hurled abuses and made attempts of assault. Accordingly, complaint was lodged to Panchpaoli Police Station. On 01/08/2014, at about 9:00 p.m., Anil was chatting with his friends namely Vikas Motghare and others. A two-wheeler i.e. Activa reached there and was keeping an eye on Anil. Thereafter, his wife Arti joined in chat. At about 09:15 p.m., the pillion rider of the two wheeler (Activa) rushed to Anil. They were carrying sharp edged weapons. One of those assailants gave blow. Anil made an attempt to escape from the blow and it hit the portion of neck below the left ear. Arti intervened so as to save her husband. Arti was then subjected of the assault. As there was hue and cry, people from the locality rushed there. Anil was successful in catching hold one of the assailants. Arti became unconscious. Two assailants fled away from the spot. Attempt was made to shift Arti in Mayo Hospital, Nagpur and provide medical assistance to her as well Anil. Unfortunately before any medical assistance to provide, the Doctors declared Arti dead. The person, who was caught hold on the spot by Anil, was Akash Dorkhande. Anil expressed suspicion over the members of Khante family, Narendra Kesarwani, Surendra Kesarwani and Sonu Kesarwani. This is the sum and substance of the report.

The learned Counsel Mr. Daga for the applicant vehemently submitted that the other accused namely Mrs. Anita Khante, Ravindra Khante, Sonu Kesarwani and Narendra Kesarwani approached this Court by filing applications for seeking pre-arrest bail. Mr. Daga placed on record the copy of order passed by this Court dated 11/11/2014 in Criminal Application (ABA) Nos. 479, 489 , 493 and 540 of 2014. The same is taken on record and marked as "X" for identification. Mr. Daga, by inviting my attention to the order passed by this Court, submitted that considering the material viz. F.I.R. and case-diary, this Court allowed the applications. He submits that this Court on the backdrop of the allegations considered the case of the prosecution against the Khante and Kesarwani families, as the allegations against them are that they were the persons instrumental for the alleged assault. He further submits that though at that time, i.e. when the applicant approached this Court, the investigation was in progress, on the backdrop of the material, this Court allowed the applications and granted protection in the nature of pre-arrest bail. He then submits that now the investigation is complete and concluded in filing the charge-sheet. He also submits that there is no substantial development in collection of material so as to establish the allegation of the prosecution in the nature of conspiracy was hatched by Kesarwani brothers. He further submits that the

applicant was arrested on 02/08/2014 and he stands on a better footings than those persons, who had approached this Court. It is the submission of Mr. Daga that though not admitting, but assuming that the material was collected by the investigating agency subsequent to the order passed by this Court dated 11/11/2014, the material hardly reflects the active involvement of the present applicant. He then submits that the investigating agency only on the ground that the statement of co-accused is recorded opposing the prayer of the applicant. His submission is, the worth of statement of co-accused itself is too shaky and too inconsequential, with such material, the liberty of the applicant cannot be curtailed for an indefinite period.

Mr. Ghodeswar, the learned A.P.P. vehemently opposes the application. He presented the material collected by the investigating agency for my perusal. It is the submission of the learned A.P.P. that Arti Borkar, who was active member of a political party, approached the Government authorities many a time raising the issue of mischief and ill-deeds of Kesarwani brothers. As certain action was initiated by the Food and Drugs Department resulting in closure of chilly depot and also of the kerosene depot of Kesarwani brothers, because of the closure, Kesarwani brothers were carrying a serious grudge against Arti Borkar and her family. The learned A.P.P. submits that a plan was hatched by Kesarwani brothers to eliminate Arti Borkar and

her family somehow. The learned A.P.P. submits that Kesarwani brothers, who were the string puller, were behind the curtains and hired the persons to give an ultimate effect to the plan hatched of elimination of Borkar family. The learned A.P.P. further submits that the statement of co-accused namely Vishal @ Shanu was recorded. From the statement of Vishal, it reveals that certain amount was given as an advance payment to the assailants against a fixed amount of Rs.4,00,000/- for eliminating Borkar family. He submits that out of that advance payment, a two wheeler was also purchased. The learned A.P.P. further submits that apart from the statement of the co-accused, the other material against the applicant is in the form of CDR. He submits that the applicant was in touch with the assailants.

On perusal of the material, what reveals is the statement of an accused namely Vishal @ Shanu is recorded. The statement of certain eye witnesses is also recorded by the investigating agency. The statement of co-accused Vishal @ Shanu is certainly a weak material as submitted by the learned Counsel for the applicant, such a statement by itself cannot be a piece of material to establish the action of the applicant with the commission of crime. The other material is in the form of CDR. On minute perusal of the material, namely the CDR, there is no reference to such establishment of the contact by the applicant to the assailant, who was caught hold on the spot and, therefore,

this CDR also falls short to immediately connect the applicant with the assailants.

It is not in dispute that now the investigation is complete. The other accused are either enlarged on regular bail or protected by the pre-arrest bail orders passed by this Court. The apprehension of the Investigation Officer can be taken care of by imposing certain conditions on the applicant. The learned Counsel for the applicant has made out a case for enlargement of the applicant on bail.

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 or two sureties in the like amount on the following conditions.

- i. The applicant to attend Panchpaoli Police Station, Nagpur, 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 commencement 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 numbers, to the investigating agency or in case of change

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

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 these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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