

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

Criminal Application [ABA] No.79 of 2015

(Juned @ Shanu s/o Shaikh Sabir
 vs.

The State of Maharashtra, through P.S.O. Wadgaon Road, Tahsil and District Yavatmal)

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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

Mr. S.C. Bhalerao, Advocate for the Applicant.
 Mr. P.V. Bhoyar, A.P.P. for the Non-Applciant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : MAY 5, 2015.

Heard the learned Counsel for the applicant.

The applicant is before this Court seeking protection in the nature of pre-arrest bail apprehending his arrest in Crime No.573/2014, registered at Police Station Wadgaon Road, District Yavatmal for the offences punishable under Sections 392 read with Section 34 of the Indian Penal Code.

The report was lodged at the instance of one Niraj Umar. The sum and substance of the report is, the informant Niraj Umar, who was driver of the truck bearing no. MP-09/HG/6823, was coming from Adilabad (Andhra Pradesh) along with the truck load of 20 tonnes, 1 qwintal and 25 kilograms of fodder oil cakes. He was accompanied by another driver Shobhran Yadav and cleaner Hemant Yadav.

At about 12:30 midnight, these trio reached Yavatmal. After parking the vehicle near Mokshadham at Yavatmal-Pandharkawada Road, when these trio were resting, four unknown persons entered in the truck on the point of knife and threatened them. These accused persons fled away with the truck and the material loaded in it. The accused persons snatched the cell phones of the complainant. The complainant was successful in jumping from the truck when the truck was in a slow speed and rushing to a hotel nearby made phone call to the police. On reaching the police staff at the hotel, from where the phone call was made, the complainant made aware about the incident to the police staff. The report was lodged accordingly. The investigation was conducted. The investigating agency successfully arrested three accused persons.

The learned Counsel Mr. Bhalerao submits that the only material against the present applicant is the statement of the co-accused involving the applicant. The learned Counsel Mr. Bhalerao further submits that though it was stated in the report that these four persons were unknown to the complainant and the complainant in his report stated that he will be in a position to identify these persons, the investigating agency, for the reasons best known to it, failed to conduct any

identification parade. Mr. Bhalerao then submits that in the reply filed by the State, it is alleged that the applicant was in touch with the other accused persons. He submits that on such a weak material, namely the statement of co-accused, in support of the allegation that the applicant was constantly in touch with the other accused, the prosecution hardly can establish any case against the applicant. Mr. Bhalerao then submits that on such a weak piece of material alleged against the applicant, subjecting the applicant to custodial interrogation is neither required nor justifiable. The learned Counsel then submits that the applicant is protected by interim order of this Court and the applicant is ready to co-operate the investigating agency.

Mr. Bhoyar, the learned A.P.P. opposes the application.

Though the learned A.P.P. submits that the material against the applicant is only the statement of co-accused, he further submits that the applicant is having the criminal antecedents and he was one of the accused in Crime No. 180/2007. He submits that as per his instructions, the applicant was convicted in the said crime along with other accused.

The learned Counsel for the applicant made available the copy of judgment of the learned Additional Sessions Judge in Sessions Trial No.119/2010 for my perusal. In the said sessions trial, the applicant was accused no.2. The trial was arising out of Crime No.180/2007. The learned Sessions Judge, Yavatmal found no material against the applicant and other accused Mahesh Thakur. The evidence brought on record by the prosecution was wholly insufficient. The present applicant and the other accused were acquitted by the learned Sessions Judge.

The learned A.P.P. fairly submits that the statement was made in the reply on the instructions received and he was not having the copy of the judgment and order in Sessions Trial No.119/2010.

Considering all these aspects, in my opinion, the learned Counsel for the applicant has made out a case for protecting the applicant. The apprehension of the State can be taken care of by imposing conditions on the applicant.

In the result, the application is allowed. The interim protection granted by this Court by order dated 23/02/2015 is confirmed with a condition that the applicant to attend the Police Station Wadgaon Road, District Yavatmal on every second and fourth Sunday from 09:00 a.m. to 12:00

p.m. and maintain a diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer till the charge-sheet is filed.

The application is disposed of in above terms.

JUDGE

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