

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

Criminal Application [BA] No.128 of 2015

(Kunal Shivcharan Tayade

vs.

The State of Maharashtra, through P.S.O. Old City, Akola)

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

Court's or Judge's Orders

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Mr. S.V. Sirpurkar, Advocate for the Applicant.
 Mr. R.S. Nayak, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 20, 2015.

Heard the learned Counsel for the applicant and the
 learned A.P.P. for the State.

The applicant is before this Court seeking his
 enlargement on bail in connection with Crime No.188/2014,
 registered at Police Station Old City, Akola, for the offences
 punishable under Sections 143, 147, 148, 149, 323, 326, 307,
 302 and 109 of the Indian Penal Code.

The learned Counsel for the applicant, by inviting
 my attention to the report lodged at the instance of Sachin
 Nandane, submits that in the report though there is a reference
 to the incident of having food at the restaurant and purchase of
 10 beer bottles and on demand of the bill, one Satish states that
 the bill be accounted in his credit account, when Sachin was not
 ready, Satish and Sagar hurled abuses and gave threats of dire

consequences. On the same day, at about 09:00 a.m., Satish, Sagar and four other associates entered in the restaurant armed with iron rods and sticks. They started beating Sunil. When Sachin and some other staff members made an attempt to intervene, they were also subjected to assault. Accordingly, report was lodged. The learned Counsel for the applicant submits that in this report, a vague reference is made to four associates, whereas Sachin specifically refers to the act of Satish and Sagar. The learned Counsel then refers to the supplementary statement of Sachin and other witnesses viz. Raju Ingle, Sheikh Jahir, Bhaskar Shende and Vinod Chawalkar. The learned Counsel then states that in the supplementary statement of Sachin recorded on 28th September, 2014, he refers to the applicant by his name. The learned Counsel further submits that even in the statement of other witnesses, a vague reference is made to the act of 4-5 associates of Satish and Sagar. Thus, it is the submission of the learned Counsel for the applicant that, though not admitting, assuming that some role is played by the applicant, it is only to the extent of his presence on the subject that too at the instigation of Gajanan. As the applicant played no role of any attack against the victim Sunil, no serious allegation of any offence can be attributed against the applicant. The learned Counsel, therefore, submits that as the material against the applicant being very weak and as the applicant is

behind bars for a considerable period i.e. since 01/09/2014, and as the material collected by the investigating agency is concluded in filing the charge-sheet, no fruitful purpose would be served by keeping the applicant behind the bar for further indefinite period.

The learned A.P.P. vehemently opposes the application.

I have gone through the material. The learned Counsel for the applicant was justified in submitting that at the first instance, the informant/complainant Sachin, who claims to be an eye witness on the prelude of the incident as well as the actual incident makes a vague reference of four associates along with Satish and Sagar, in a supplementary statement recorded after a week, he then refers to the present applicant. In this supplementary statement, he alleges that the applicant along with other associates played some role that too assault by sticks on Sachin. Interestingly enough, there is nothing on record to show that the informant Sachin received any injury much less any injury caused by stick.

The perusal of the statements of other witnesses also shows that these witnesses make a vague reference of 4-5 associates. Raju Ingle, who also claims that in the attack, he was also one of the victim. In the material, there is nothing to show that Raju received some injury. The other witnesses make

similar vague statement without there being anything on record to support their claim of receiving some injury in the assault. The medical certificate issued in respect of victim Sunil shows that Sunil received head injury. Thus, the material only supports that many assailants namely Satish and Sagar were the lead players and their act resulted in severe injury caused to Sunil. Initially, Sunil was admitted in the hospital on the very day of the lodgment of the report and breath last on 21st August, 2014.

Considering all these aspects and on the backdrop of the material, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail. The apprehension of the State can be taken care of by imposing certain conditions on 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 or two solvent sureties in the like amount on the following conditions.

- i. The applicant to attend Police Station Old City, Akola, on every second and forth Sunday of the month between 09:00 a.m. to 12:00 p.m. and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating 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.
- iv. In case the applicant is moving out of the area of Police Station Old City, Akola, 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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