

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

Criminal Application [BA] No.143 of 2015

(Abdul Iran @ Bhuru s/o Abdul Kalam

vs.

The State of Maharashtra, through P.S.O. Ganeshpeth, Nagpur)

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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

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 9, 2015.

Heard Mr. Mir Nagman Ali, the learned Counsel
 for the applicant.

The applicant is before this Court seeking his
 enlargement on bail in connection with Crime No.209/2014,
 registered at Ganeshpeth Police Station, Nagpur for the
 offences punishable under Sections 143, 147, 148, 302 read
 with Section 34 of the Indian Penal Code and under Section 4
 read with Section 25 of the Arms Act.

The learned Counsel for the applicant, by inviting
 my attention to the report lodged at the instance of one Anil
 Gaur, submits that an information was received by Anil that
 his brother Ganesh was lying in a pool of blood near a place
 called 'Sukrawari Talav'. On reaching the spot, he could
 notice a discussion that some 4-5 persons, who were in a
 vehicle, on account of some earlier rivalry, committed murder

of his brother. The learned Counsel further submits that on the basis of the report, the investigation was proceeded further and on collection of the material in the process of investigation, the charge-sheet is filed. The applicant is arrested on 04/11/2014. He further submits that the informant-Anil himself states that his brother was associated with some mischief players. Thus, Anil himself claims a possibility of an attack over his brother by somebody, who is carrying rivalry against his brother. The learned Counsel then submits that the applicant is a driver with one Gajendra Bhisikar, who used to provide vehicle on hire basis. Gajendra also runs a travel agency. The learned Counsel also by inviting my attention to the statement of Yuraj Gotafode submits that the role attributed to the present applicant is at the most a driver of the vehicle, which was used for commission of the offence. He then by inviting my attention to the other material namely seizure of knife used by other accused and blood stained clothes submits that this material clearly points out finger on active role of the accused-Firoz. He further submits that even this material refers to the fact that accused-Firoz was driving the vehicle and gave a dash to Ganesh Gaur, who was driving a motorcycle. Thus, the submission of the learned Counsel was, considering this

material by any angle, the applicant cannot be said to be a person, who committed an act of Section 302 of the Indian Penal Code. There is neither any intention or any motive attached to the present applicant. The learned Counsel then submits that as the charge-sheet is filed, there is also no question of collection of any evidence. The learned Counsel, therefore, submits that on such a weak material against the applicant, where the prosecution can hardly establish its case against the applicant, there cannot be any requirement of the applicant keeping him behind the bar for further indefinite period.

Mr. R.S. Nayak, the learned A.P.P. vehemently opposes the application. He submits that though the applicant was in company of other accused for considerable period of more than 30 hours, he made no attempt to give any information either to the owner of the vehicle or made any attempt to approach the police authority.

With the assistance of the learned Counsel for the applicant and the learned A.P.P., I have gone through the material, more particularly the statement of Gajendra Bhisikar and Yuraj Gotafode. The vehicle Tavera, which was used as per the allegation of the prosecution in commission of offence, is owned by Yuraj Gotafode. Gajendra though runs a travel

agency and provides vehicle on hire basis, when a phone call was received by him from Firoz, he was at Mumbai and was unable to provide any vehicle, therefore, he informed Yuraj to provide his vehicle. Accordingly, Yuraj provided vehicle to Firoz. There is nothing on record to show that there was a specific demand of this applicant. The applicant was a driver and in the course of usual affairs, he was assigned a job of driving the vehicle at that relevant time. The statement of Yuraj further reveals that when he made initial call to the present applicant, there was no contact established with him. Subsequently, the applicant-driver informed that applicant and the party are proceeding at a place Chhindwara. The statement also reflects that for some time, the contact could not be established with the driver. The statements of Gajendra Bhisikar and Yuraj Gotafode clearly state that the vehicle was hired by Firoz.

Thus, considering this material, in my opinion, there is merit in the submissions of the learned Counsel for the applicant that the applicant was merely providing his service as a driver in the vehicle, which was allegedly used in the offence. Though the learned A.P.P. submits that the applicant failed to contact Yuraj, the statement of Yuraj shows that initially he could not establish the contact and

subsequently a phone call was received by him that the party and the applicant proceeded to Chhindwara. Merely because there was no communication for some period, neither any intention or motive can be attached to the applicant on the basis of this material. As the other material is collected by the investigating agency and the charge-sheet is already filed, 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 prosecution 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 Ganeshpeth Police Station, Nagpur on every second and forth Sunday of the month from 09:00 a.m. to 12:00 p.m. and maintain a diary of his attendance to the police station duly countersigned by the Investigating Officer or the Police Station Officer, till the trial commences.
- 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 Ganeshpeth 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 observations are for consideration of the prayer of the applicant for enlargement on bail and the learned Sessions Judge may not be influenced by these observations in the process and progress of the trial and the trial be conducted on its own merits.

The application is disposed of as such.

JUDGE

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