

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

Criminal Application [BA] No.848 of 2014

(Sayyad Maksud Ali Muzzaffar Ali vs. State of Maharashtra, through P.S.O. Karanja, Dist. Wardha)

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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 02, 2015.

Heard Mr. S.A. Radke, the learned Counsel for the applicant.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.30/2013, registered at Karanja Police Station, District Wardha for the offences punishable under Sections 395, 142, 342 read with Section 120-B of the Indian Penal Code and under Section 3 read with Section 25 of the Arms Act.

The report came to be lodged at Karanja Police Station at the instance of the complainant Domanil Ganiyan alleging that he along with his associates were carrying cash to the tune of Rs.2,36,50,000/- from Axix Bank, Akola to Nagpur. The vehicle was apprehended midway. Seven accused persons on the threat of pistol and by assaulting to those bank employees were successful in looting the amount by applying force. The investigating agency, which was set in motion, carried out the

investigation. Charge-sheet is filed against 24 accused persons. The applicant is accused no.6 in the list of those accused persons.

The learned Counsel for the applicant submits that the applicant is behind the bars since 21st of March, 2013. He further submits that apart from material in the nature of mere suspicion, there is no material against the applicant, which can connect the applicant with the commission of crime. A statement is made in the application that there is no direct or indirect evidence against the applicant to connect with the crime, as there is no test identification parade conducted by the police. The learned Counsel for the applicant, on this submission and placing reliance on the order of this Court in Criminal Application [BA] No.138/2014 in the matter of other accused viz. Sallu Kumar @ Selva Kumar Balsubramanyam Kaunder, submits that the applicant is similarly situated. Thus, his attempt was in two fold submission for grant of bail viz. case of no material and parity claims with Sallu Kumar. Both these grounds can be said to be interlinked and on perusal of material, I am unable to accept the submission of the learned Counsel for the applicant.

From perusal of the material and the submission in the application, it clearly reveals that the learned Counsel for the applicant is not properly instructed. The learned Counsel is not

made aware to the material facts. The very fact that the applicant-accused no.6 was identified by the witnesses in the test identification parade, is reflected in collection of the material evidence and the same is confirmed and finds place in charge-sheet.

Mr. D.B. Patel, the learned A.P.P. made available the papers of investigation for my perusal. The papers of investigation shows that the applicant was subjected to test identification parade and he was identified by the witnesses. The applicant Sallu Kumar was before this Court by Criminal Application No.138/2014 and his application was allowed observing that cash amount of Rs.43,000/- has been recovered from the house of the applicant. As far as offence of dacoity is concerned, identification parade in respect of the present applicant was not held. Therefore, there is no material on record to indicate that the applicant was part of the dacoity. Thus, on the backdrop of this observation, this Court allowed the application. In case of present applicant, it is stated in the reply filed by the State that the test identification parade was conducted at District Jail, Wardha by Executive Magistrate, Karanja, District Wardha on 23/04/2013. In the said identification parade, the Executive Magistrate followed the procedure and the prosecution witnesses have identified the present applicant in the test identification parade, as the said

witnesses were present at the time of robbery. It is also stated in the reply filed by the State that the applicant is having criminal antecedents at his credit. Though this ground is raised by the State in opposition to the applicant, in view of the material, namely recovery of the amount at the instance of the applicant and he being identified by the witnesses in the test identification parade, in my opinion, the submission made on behalf of the applicant that there is no material against the applicant and the applicant is entitled to claim parity, is meritless. The learned A.P.P. submits that the trial is in process.

Considering that there is prima facie material available against the applicant about the role played by the applicant in commission of crime of a serious nature, where amount to the tune of Rs.2,36,50,000/- was looted by apprehending a cash van of a bank on the threat of pistol and laying assault on bank employees, I am not inclined to grant any protection to the applicant. The application thus deserves to be rejected and the same is accordingly rejected.

JUDGE

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