

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

Criminal Application [ABA] No.637 of 2014

(Kiran Ashok Ingale

vs.

State of Maharashtra, through PSO, Ramdaspath, 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

Mr. Mahesh Rai, Advocate for the Applicant.

Mr. M.J. Khan, APP for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 7, 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
 protection in the nature of pre-arrest bail in connection with
 Crime No.101/2014 registered at Ramdaspath Police Station,
 Akola for the offences punishable under Section 326, 452, 427,
 506-B read with Section 34 of the Indian Penal, under Section 3
 and 25 of the Indian Arms Act and under Section 135 of the
 Bombay Police Act.

The learned Counsel for the applicant, by inviting
 my attention to the F.I.R., submits that the report nowhere states
 the name of the present applicant. He submits that in the report,
 there is a reference of an act of an assault by sword of Deepak
 Pahurkar along with other 2-3 persons. The learned Counsel
 submits that the applicant is a student and prosecuting his

studies of diploma course in Electrical Engineering. The learned Counsel, also by inviting my attention to Annexure-F i.e. Admission Card issued by Sant Gadge Baba Amravati University to the applicant, submits that the applicant is desirous of prosecuting his studies and attending the examination, which is scheduled in April/May, 2015. The learned Counsel for the applicant submits that the prosecuting agency only on the statement of the co-accused is bent upon to implicate the present applicant in serious offence. The learned Counsel further submits that the applicant was completely unaware either of the incident took place as alleged in the report or naming of the applicant as accused by the investigating agency. The learned Counsel further submits that the applicant could notice this fact only when the police personnels started attending and visiting his house on 27/10/2014. Immediately on the next date, the applicant approached the learned Sessions Judge, Akola by filing an application seeking anticipatory bail. The learned Counsel further submits that only on the ground that the charge-sheet is filed in absence of the accused and the applicant was shown as an absconding accused, the learned Sessions Judge, Akola rejected the application without considering the merits of the application. The submission of the learned Counsel is, the only material available with the investigating agency against the applicant is a confessional statement of the co-accused. The

learned Counsel further submits that such a material itself is a doubtful material and the same falling too short to connect the applicant with alleged commission of the crime. The learned Counsel further submits that on such an suspicious material, liberty of the present applicant, who is prosecuting his studies, cannot be curtailed. The learned Counsel for the applicant then submits that the applicant was protected by an interim order passed by this Court on 12/12/2014 and the applicant has complied with the directions of this Court. The learned Counsel further submits that this Court directed the applicant to cooperate with the investigating agency as and when called upon by the investigating agency by attending the Ramdaspath Police Station, Akola. He further submits on instructions that till the date, the investigating agency has not called upon the applicant. Thus, the learned Counsel for the applicant prays for allowing the application.

Per contra Mr. Khan, the learned A.P.P. for the State vehemently opposes the application. The learned A.P.P. submits that the applicant is charged for serious offences including the offence punishable under Section 149 of the Indian Penal Code. The applicant was the member of an unlawful assembly and participated equally with the main assailants in the alleged incident dated 01/07/2014. The learned A.P.P. further submits that the F.I.R. discloses the incident and the part played

by the accused persons. The learned A.P.P. further submits that apart from the confessional statement of the co-accused, the statements of the neighbouring shop owners recorded by the investigating agency do indicate the involvement of the present applicant. The learned A.P.P., therefore, prays for rejection of the application.

With the assistance of both the learned Counsel for the parties, I have gone through the material placed on record. There cannot be any dispute on the submission of the learned A.P.P. that the F.I.R. is not an encyclopedia and the investigating agency in the process of investigation may reveal some other facts, which would lead to the involvement of the accused and the role played by the accused in depth and in detail. The submission of the learned A.P.P. that there is other material apart from the confessional statement of the co-accused, which will have to be tested by considering that material. The learned A.P.P. invited my attention to the statement of certain neighbouring shop owners. The learned A.P.P. also invited my attention initially to the statement of the co-accused. The perusal of that statement reveals that the co-accused refers to the present applicant as Papa Kamelu @ Kiran Ingle. The learned A.P.P., then by inviting my attention to the statement of the neighbouring shop owners, made an attempt to submit that the applicant, who is popularly known as Papa, is referred by the

neighbouring shop owners in their statements. In support of his submission, the learned A.P.P. invited my attention to the statements of Ashish Bhise and Rajesh Soni. The perusal of the statements shows that there is a reference of one Papa Kamelu in threatening the residents with a knife. Though the submission of the learned A.P.P. at the first blush was attractive, but on perusal of the material collected by the investigating agency concluded in filing of charge-sheet shows otherwise. It is interesting to note that the investigating agency refers two absconding accused and out of them, the agency itself refers one Nitin alias Papa Kamelu as absconding accused. Now on this backdrop, the investigating agency itself is not certain with any material that the present applicant Kiran is the only person in the locality, who is popularly known as Papa. The record itself reflects that the investigating agency alleges Nitin as a person known as Nitin @ Papa s/o. Prakash Kamelu. In such a situation, when the identity of the applicant itself is in doubt, the only material against the applicant as rightly submitted by the learned Counsel for the applicant is in the nature of a confessional statement of the co-accused. There is also merit in the submission of the learned Counsel for the applicant that if the investigating agency was interested enough to have assistance of the applicant as directed by this Court in investigation, the agency would have certainly called the

applicant, who was ready to extend his co-operation, but such an exercise is not opted by the investigating agency.

Considering all these facts in addition to the fact that the applicant, who is prosecuting his engineering study and is the bona fide student of an engineering college, in my opinion, the applicant is entitled for the protection, as prayed for, in the nature of pre-arrest bail.

In the result, the application is allowed. The interim order passed by this Court on 12th December, 2014 is confirmed with the condition that the applicant to attend Ramdaspath Police Station, Akola on every second and fourth Sunday from 10:00 a.m. to 01:00 p.m. till the trial commences.

Before parting, it would not be out of place to state that the investigating agency manned with the persons having expertise in the field of investigation is expected to act more vigilantly and with an element of seriousness. I hope and trust that the Senior Officer manning the investigating agency would consider these observations in a right spirit and act accordingly in future with more concern and caution with seriousness expected from such agency.

Authenticated copy of this order be supplied to the learned A.P.P.

JUDGE

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