

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

Criminal Application [ABA] No.668 of 2014

(Arvind Kashinath Dhabdge

vs.

State of Maharashtra, through P.S.O. Umerkhed, District Yavatmal)

=====

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

=====

Court's or Judge's Orders

Mr. K.S. Narwade, Advocate for the Applicant.

Mr. S.M. Ghodeswar, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 19, 2015.

Heard the learned Counsel for the applicant.

The applicant is before this Court apprehending his arrest in Crime No.302/2014, registered at Umarkhed Police Station, District Yavatmal for the offence punishable under Section 380 read with Section 34 of the Indian Penal Code.

The learned Counsel for the applicant, by inviting my attention to the report lodged at the instance of one Mankarnabai Kanade on 06/12/2014, submits that in the report, the complainant (mother-in-law) alleged that her widow daughter-in-law theft cash gold ornaments/articles kept in the Almirah. The complainant also stated that her daughter-in-law was having another key of the Almirah. The learned Counsel for the applicant submits that all the allegations are against the daughter-in-law and the only role attributed to the present applicant is that the daughter-in-law handed over the cash

amount and gold articles to the present applicant. The learned Counsel then submits that the applicant was protected by interim order passed by the learned Additional Sessions Judge, Pusad, dated 08/12/2014 on certain conditions. He further submits that the learned Sessions Judge though found that the material against the applicant is wholly insufficient, but for the alleged breach of conditions, rejected the application and vacated the interim protection. He further submits that the interim protection was granted to the applicant on 08/12/2014 and on the very next day i.e. on 9th December, 2014, the applicant by collecting the solvency certificate from the Office of the Tahsildar approached the Police Station and handed over the document, and the endorsement of the Police Official is also on the copy of the solvency certificate, which is placed on record. The submission of the learned Counsel is, though the learned Sessions Judge was convinced on the grounds viz. vagueness of the report, the improbability of the allegation, mud slinging and allegation of character assassination of the mother-in-law towards the daughter-in-law and though the finding of the learned Sessions Judge was in favour of the applicant, on merits, only on the alleged ground that the applicant failed to attend the police station as directed by the Sessions Court, the application was rejected. Though the applicant had approached the police station on 16th of December, 2014 in compliance of the direction

of the learned Sessions Judge, as the Investigating Officer was not in the police station, the subordinate staff refused to acknowledge the presence of the applicant and for the denial by the subordinate staff, the applicant cannot be held responsible, is the submission of the learned Counsel for the applicant. Thus, the learned Counsel for the applicant prays for allowing the application.

The learned A.P.P. vehemently opposes the application. He submits that the material collected by the investigating agency shows the involvement of the applicant. The learned A.P.P., by inviting my attention to the reply filed by the State, submits that a statement was recorded by the investigating agency of the tenant of the complainant. He states that in the statement, the tenant stated that while she had been to the house of the complainant on 15/11/2014 for payment of rent, she saw the applicant coming out of the house along with one carry bag. The learned A.P.P. also submits that the alleged property, namely cash and gold ornaments, are to be recovered and as such the custodial interrogation of the applicant is necessary.

The learned Counsel for the applicant vehemently submits that this is a after thought theory and as such it is possible that the tenant only to support the landlady, gave such statement.

Considering the report, reply filed by the State and the order passed by the learned Sessions Judge finding on merit that the applicant was entitled for the protection and also considering the fact that the protection is opposed only on the account of the statement of the tenant, in my opinion, the learned Counsel for the applicant has made out a case. The material collected by the investigating agency can be questioned on various grounds. The apprehension of the State can be taken care of by imposing the conditions on the applicant.

In the result, the application is allowed. The interim order passed by this Court on 24th December, 2014 is confirmed with a condition that the applicant to attend Umerkhed Police Station, District Yavatmal on every Sunday of the month from 09:00 a.m. to 12:00 p.m. and maintain a diary of his attendance duly countersigned by the Police Station Officer, till filing of the charge-sheet.

The application is disposed of as such.

JUDGE

**sdw*