

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 CRIMINAL APPLICATION NO. 5312 OF 2016

**PRADEEP @ MITHUN NANASAHEB
THOMBRE**

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. V.D.Hon, Senior Counsel i/b

Mr. A.D.Shinde, Advocate for Applicant.

Mr. S.P.Sonpawle, A.P.P. for Resp. – State.

.....

CORAM : A.M.BADAR, J.

DATE : 30th SEPTEMBER, 2016

.....

PER COURT :

1. Applicant Pradeep @ Mithun Nanasaheb Thombre, accused in Crime No. 48/2016 registered at Virgaon police station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable U/ss 307,353,379,341,143,147 and 149 of the Indian Penal Code, by this application is seeking his release on bail prior to filing of the charge sheet.

2. Heard the learned Senior Counsel for

applicant/accused. The learned Senior Counsel argued that co-accused have already been released on bail and their bail orders are placed on record. It is further argued that so far as offence punishable u/s 307 of the Indian Penal Code is concerned, neither informant Ashok Raghunathrao Neve, police Head Constable nor his pillion rider had suffered any injury in the alleged incident and, therefore, Section 307 of the Indian Penal Code is not attracted. The learned Senior Counsel further argued that the F.I.R. itself shows that the informant was going for some other work, such as inspection and he was not assigned with the job of checking vehicles and, therefore, even Section 353 of the Indian Penal Code is not attracted to the case in hand. The learned Senior Counsel further argued that statements of witnesses recorded by the Investigating Officer shows that they have disclosed hear-say information about the crime in question. It is further argued that even the tractor as well as trolley are seized by police and necessary investigation has already been done and, therefore, the applicant is entitled for bail.

3. The learned A.P.P. opposed the application by contending that the statements of independent witnesses, named Jalindar Sopan Kunjir, Sandeep Gorakhnath Kunjir and Laxman Baban Lakare are supporting version of the informant and, therefore, the applicant is not entitled for bail.

4. I have carefully considered the rival submission and also perused the papers of investigation produced by the learned A.P.P.

5. The crime in question is registered on the basis of the F.I.R. lodged by Ashok Raghunathrao Neve, police Head Constable of Lagaon bit.

6. Informant Ashok Neve, police Head Constable reported on the day of incident itself that on 05/06/2016, he was going-on for enquiry of Accidental Death Case No. 10/2016 by his motorcycle. The informant further reported that when he was passing by road near Purangaon, he saw a tractor to which a trolley loaded by sand was attached, was proceeding towards Vaijapur road. The informant reported that this vehicle was not bearing registration number. He, therefore, gave a signal to stop that vehicle. The vehicle stopped and then he asked the driver of it whether he is having transit pass to transport minor mineral i.e. sand. The driver informed that he is not having transit pass. The driver disclosed the name of the owner i.e. present applicant. The F.I.R. further makes it clear that then in presence of 2 panch witnesses, the informant seized that tractor by effecting seizure panchanama and then that tractor was being taken to police station Virgaon within whose jurisdiction the incident in question happened. The informant further reported that when he was taking the tractor towards police station, near Kalbhairav temple, 2 motorcycle riders accosted them. The applicant then alighted from one motorcycle and questioned the informant as to how he dared to take that tractor to the police station. The informant reported that applicant Mithun then took charge of the steering wheel of the tractor to which the trolley was attached and then drove that tractor on the

person of the informant with an intention to kill him. The informant reported that he took his motorcycle by the side of the road and saved his life. The informant further reported that then the applicant emptied the trolley and took that tractor which was ultimately stopped at the water tank of Babhulgaon. The informant reported that the applicant and his 3 associates fled from the spot of the incident.

7. The statements of Jalindar Sopan Kunjir and Laxman Baban Lakare are disclosing the fact that they saw the informant chasing the tractor by motorcycle and ultimately that tractor stopped near the water tank and present applicant, who was driving the tractor then flee from the spot with others.

8. Section 149 and 150 of the Code of Criminal Procedure mandates every police officer to interpose for the purpose of preventing cognizable offence. In the case in hand, the F.I.R. itself shows that the tractor was attached with trolley loaded with the sand and the vehicle was not having registration number. Even a design to commit cognizable offence is required to be prevented by the police officer as per the mandate of the Code of Criminal Procedure. Therefore, no merits can be found in the argument of the learned Senior Counsel for the applicant that the informant was not entrusted with the duty of checking permit of the vehicles.

9. The F.I.R. categorically mentions that the applicant took custody of tractor seized by the police, sat on

the steering wheel and drove that tractor on the person of the informant – police Head Constable, who was in uniform. It is argued that the informant had not suffered any injury. The F.I.R. does not show that the informant – police Head Constable was being accompanied by somebody else. Section 307 of the Indian Penal Code, according to the learned Senior Counsel for the applicant, is not attracted in such a situation. It is well settled that for attracting penal provisions of Section 307 of the Indian Penal Code, it is not essential that bodily injury should have been inflicted. In-fact, infliction of injury is not at all ingredient of the offence punishable u/s 307 of the Indian Penal Code. The intention coupled with an overt act in execution of such intention, are only the requirements of Section 307 of the Indian Penal Code. In the case in hand, the applicant dared to take charge of the tractor seized by the informant – police Head Constable and then drove that tractor on the person of the informant. Now-a-days, police employees working the field in such a situation are soft-targeted by offenders and such incidents are reported day in day out. Therefore, it can not be said that Section 307 of the Indian Penal Code is not attracted to the case in hand.

10. Suffice it to mention that there was an attempt to commit murder of the police officer, who had seized the tractor owned by present applicant. That tractor was loaded with minor mineral i.e. sand without there being any transit pass. It also reflects commission of the offence punishable u/s 379 of the Indian Penal Code. A public servant was deterred from performance of his duty by means of criminal force.

11. In this view of the matter, no case for bail is made out. Hence, the following order.

- (i) The Criminal Application stands rejected.
- (ii) Needless to mention that these observations are *prima facie* in nature having no bearing on the trial against present applicant.

[A.M.BADAR, J.]