

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5659 OF 2016

Kiran S/o Ashok Ghorpade

Age : 20 years, Occu.: Agri.,

R/o Nandgaon, Tq. Nagar,

District — Ahmednagar

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. N.C. Garud, Advocate for the applicant

Mr. S.S. Dande, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.

DATE : 28/11/2016

ORAL ORDER :

Heard.

2. The applicant, who has been arrested on 26/6/2016, seeks his release on bail, in connection with Crime No.I-59 of 2016 registered at Loni Police Station, Dist. Ahmednagar for the offences punishable Section 302, 307, 394, 396, 363, 120-B r/w. Section 34 of the Indian Penal Code.

3. As per the report dated 4/5/2016, the informant, who was a cleaner on a goods vehicle, was

proceeding from Andhra Pradesh to Surat. In the night of 3/5/2016, when the informant was sleeping and his colleague Mani was driving the truck, he, on waking up, found that an unknown person was driving the truck and three other persons were assaulting the driver. Subsequently, said driver succumbed to the injuries. Cash of Rs.39,500/- as well as mobile handsets of the driver and cleaner were taken away by said unknown persons. On that basis, aforesaid offence came to be registered. After recording the supplementary statement of the informant, the present applicant was named in the offence as the absconding accused. The applicant was arrested on 26/6/2016 and as per his statement on memorandum, under section 27 of the Indian Evidence Act, amount of Rs.2400/- was recovered from him. Chargesheet came to be presented sometime in the month of July, 2016. In this backdrop, present application has been filed.

4. It is submitted by learned counsel for the applicant that the applicant was not initially named in the F.I.R. After his arrest, the role attributed, is of driving the truck in question. Despite arrest of the

applicant, test identification parade was not conducted though the applicant was under arrest. It is submitted that on parity, the applicant would be entitled to be released on bail, as accused no.8 has been so released by the Sessions Court. It is further submitted that as chargesheet has been filed, the applicant can be released on bail by imposing conditions.

5. The application is opposed by the learned Additional Public Prosecutor by relying upon the material which was part of the chargesheet. He refers to the statement of memorandum dated 26/6/2016, leading to recovery of Rs.2400/-. He submitted that applicant is stated to have driven the truck by pushing aside the driver and, therefore, his involvement in the offence is evident. As the applicant was absconding till his arrest, he is not entitled for being so released on bail.

6. Perused the chargesheet and documents filed alongwith it. The applicant came to be arrested on 26/6/2016 and an amount of Rs.2400/- has been recovered from him on memorandum. As per the version of the

informant, the applicant is alleged to have pushed the driver and taken control of the truck in question. The documents indicate that insofar as accused nos. 1 to 5 are concerned, identification parade was conducted on 23/5/2016. The applicant was in arrest from 26/6/2016 till 1/7/2016, however, identification parade, insofar as present applicant is concerned, was not held. Chargesheet indicates that the same has been filed sometime in the first week of July, 2016.

7. Considering the fact that the prosecution has not sought to identify the present applicant and the role attributed is of driving the truck in question, as the chargesheet has been filed, the applicant can be released on bail, subject to imposing conditions on him.

8. In view of aforesaid discussion, the following order :-

ORDER

I) Criminal Application is allowed.

II) The applicant is directed to be released on

bail in Crime No.I-59 of 2016 registered at Loni Police Station, Dist. Ahmednagar for the offences punishable Section 302, 307, 394, 396, 363, 120-B r/w. Section 34 of the Indian Penal Code, upon furnishing P.R. bond of Rs.20,000/- (Rs. Twenty Thousand) with one surety in the like amount.

III) The applicant shall attend the Court of learned Sessions Judge, Kopergaon on 10th of each month and as per the directions of the learned Sessions Judge.

IV) The applicant shall co-operate in the completion of the trial.

V) The applicant shall furnish his contact details and details about his residence before the learned Sessions Judge.

VI) The applicant shall not tamper with the material collected by the prosecution.

VII) Breach of any of the conditions shall entitle the State to seek cancellation of the liberty granted to

the applicant.

9. Criminal Application is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/