

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6152 OF 2016

Vikas Bhausahab Pathare,
Age : 22 years, Occu.: Agriculture,
R/o : Banpimpri,
Shrigonda, District - Ahmednagar .. Applicant

Vs.

The State of Maharashtra
Through Maharashtra State Excise
Department, Flying Squad No.1,
Ahmednagar .. Respondent

Mrs. Rashmi Kulkarni, Advocate h/f Mr. Sanket S. Kulkarni,
Advocate for the applicant
Mr. R.V. Dasalkar, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.
DATE : 24/11/2016

ORAL ORDER :

Heard.

2. The applicant seeks grant of protection, as he anticipates his arrest in connection with Crime no. III-334 of 2016 dated 15/10/2016 registered by the Maharashtra State Excise Department, Flying Squad no.1, Ahmednagar for the offences punishable under Section 65(A)(D)(E)(F), 80, 81, 83, 90 and 108 of the Bombay Prohibition Act, 1949.

3. In the report submitted on behalf of the Excise Department, it has been stated that on 14/10/2016, a car was seized from accused no.1 – Shamkant Pathare, in which illicit liquor and other material valued at Rs.4,08,930/- was found. On that basis, the offence in question came to be registered.

4. Learned counsel for the applicant submitted that as per the report submitted, it was accused no.1, who was found in custody with the material seized. The present applicant has been named without any justifiable basis. It is further submitted that accused no.1 was granted bail on the same day when he was produced before the learned Magistrate. It is therefore submitted that applicant is entitled for protection.

5. Learned Additional Public Prosecutor, on instructions, submits that the averments made in paragraph no.3 of the affidavit filed on behalf of the respondent dated 10/11/2016, to the extent it is stated that the applicant is having criminal background and is a history-sheeter, is not correct. He further submits,

on instructions, that no criminal antecedents were found insofar as the present applicant is concerned and hence tenders apology of behalf of said Officer, who has sworn the affidavit. It is then submitted that as per the report submitted by the Excise Department, the present applicant has been named and his brother has been arrested alongwith the seized material. He further submits that as per the record, the present applicant had fled from the spot when the vehicle was intercepted while his brother was arrested.

6. Perused the documents filed alongwith the application as well as the affidavit dated 10/11/2016 filed by the respondent. It is to be noted that when the vehicle in question was intercepted, brother of the applicant was arrested at the spot. The incriminating material has already been seized and considering the nature of offence, I do not find that custodial interrogation of the applicant is warranted. Instead, he can be directed to co-operate with the investigation.

7. In view of aforesaid, the following order :-

ORDER

I) Criminal Application is allowed.

II) In the event of applicant's arrest in Crime no.III-334 of 2016 dated 15/10/2016 registered by the Maharashtra State Excise Department, Flying Squad no.1, Ahmednagar for the offences punishable under Section 65(A)(D)(E)(F), 80, 81, 83, 90 and 108 of the Bombay Prohibition Act, 1949, he shall be released on bail, upon furnishing P.R. bond of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount.

III) The applicant shall attend the Office of the Maharashtra State Excise Department, Flying Squad No.1, Ahmednagar on 2/12/2016 and, thereafter, as per the directions of the concerned Officer.

IV) No steps shall be taken by the applicant to tamper with the material collected by the prosecution.

8. Considering the averments made in paragraph no.3 of the affidavit dated 10/11/2016, filed by Sub

Inspector, State Excise, Flying Squad No.1, Ahmednagar with regard to the antecedents of the present applicant, which are now stated to be incorrect on instructions, the concerned Officer is directed to ensure that such incorrect information is not furnished in the future in any other matter.

9. Criminal Application is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/