

(1)

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

CRIMINAL APPLICATION NO.6723 OF 2016

Nitin Gitaram Kapse,
Age: 45 years, Occu: Agri &
Social Worker,
R/o. Pimplas, Tq. Rahata,
Dist. Ahmednagar ..APPLICANT

VERSUS

The State of Maharashtra,
Through Rahata Police Station,
Dist. Ahmednagar ..RESPONDENT

Mr R. N. Dhorde, Senior Advocate instructed by
Mr S. S. Chapalgaonkar, Advocate for applicant;
Mr V. S. Badakh, Addl. Public Prosecutor for
respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 21st DECEMBER, 2016

ORAL ORDER :

The applicant, who has been arrested on
13th November, 2016 in connection with Crime No.
I-89 of 2016 registered with Rahata Police Station,
District Ahmednagar, for the offences punishable
under Sections 120-B, 143, 147, 148, 149, 302, 323,
324, 504 & 506 of the Indian Penal Code and

(2)

Sections 37(1)(3)/135 of the Bombay Police Act, seeks his release on bail.

2. As per the first information report dated 23rd August, 2016, the informant has stated that on 22nd August, 2016 at about 8-45 p.m. his brother Avinash alongwith his friends were walking on the cement road behind the Grampanchayat. At that point of time, the applicant along with his son and other accused persons had assaulted his brother. The applicant and one Santosh were armed with iron rods. Out of political rivalry, the informant's brother was assaulted, as a result of which, he suffered various injuries and succumbed to the same. On that basis, the aforesaid offence came to be registered. On the next day, supplementary statement of the informant came to be recorded, in which it is stated that the applicant had given threats on 21st August, 2016 to the deceased on his phone. However, the applicant was not present when the actual assault took place. Pursuant to the aforesaid offence, the applicant was arrested on

(3)

13th November, 2016.

3. It is submitted by the learned Senior Counsel for the applicant that the applicant has been implicated on account of political rivalry with the family of the deceased. It is submitted that on 22nd August, 2016 the applicant was out of the village when the offence had taken place and that he had actually gone to Nashik. It is submitted that in the evening of 22nd August, 2016 the applicant along with others had been to a hotel for having dinner and the said aspect was clear from CCTV footage of the said hotel placed on record and said would indicate the absence of the applicant from the site of the incident. It is submitted that on the previous day, the applicant himself had lodged N.C.R. No. 362 of 2016 in which it was stated that the deceased had given threats to the son of the applicant. He then submitted that only on the basis of mobile conversation in the evening of 22nd August, 2016 at about 9-35 p.m., the present applicant has been booked under

(4)

the provisions of Section 120-B of the Indian Penal Code. He has also referred to the statements recorded under Section 164 of the Code of Criminal Procedure to indicate the falsity in the case of prosecution. It is also submitted that the charge sheet has also been filed after completion of the investigation. It is, therefore, submitted that the applicant deserves to be enlarged on bail.

4. The application is opposed by the learned Additional Public Prosecutor by relying upon the police papers. It is submitted that on 21st August, 2016 N.C. offence came to be registered at the instance of the deceased against the present applicant on the ground that he had given threats to him. It is submitted that though initially first information report stated that the applicant was present at the site when the incident took place, it was clarified by the informant while recording his supplementary statement that as he was in disturbed state of mind, said statement was made.

(5)

5. It was then submitted that as per the statement of Prakash Pund, he had seen one of the accused – son of Dattatraya Khapte using mobile phone and calling the present applicant to state that deceased had been beaten. It is, therefore, submitted that considering the gravity of offence and likelihood of witnesses being coerced, the applicant does not deserve to be released on bail.

6. With the assistance of the learned Counsel for the parties, I have perused the documents placed on record alongwith charge sheet. As per the first information report lodged by brother of deceased, it is stated that the applicant was armed with an iron rod alongwith other accused and they had assaulted the brother of the informant. On the same day, supplementary statement came to be recorded in which it was alleged that the applicant was guilty of hatching conspiracy for doing away with the deceased. The call detail records collected by the prosecution indicate at about 9-35

(6)

p.m. the applicant had received a phone call from one of the accused persons. The incident in question is alleged to have occurred at about 8-45 p.m. and as per version of witness Prakash Pund, call was made immediately after the assault on Avinash. *Prima facie*, the aforesaid call which has been made at about 9-35 p.m. is almost 50 minutes after the assault in question.

7. For the present, the evidence against the present applicant appears to be circumstantial in nature and based on previous disputes between the parties. The charge sheet in the aforesaid offence has been now filed after completion of investigation. Considering the nature of allegations against the present applicant, he can be directed to be released on bail subject to imposing appropriate conditions.

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

(i) The applicant is directed to be released

(7)

on bail in connection with Crime No. I-89 of 2016 registered with Rahata Police Station, District Ahmednagar, for the offences punishable under Sections 120-B, 143, 147, 148, 149, 302, 323, 324, 504 & 506 of the Indian Penal Code and Sections 37(1)(3)/135 of the Bombay Police Act, on furnishing P.R. bond of Rs.20,000/-, with one surety in the like amount.

(ii) The applicant shall not enter the limits of Rahata Taluka, District Ahmednagar till completion of the trial.

(iii) The applicant shall not take any steps to influence the prosecution witnesses.

(iv) The applicant shall co-operate with the Sessions Court in completion of trial.

9. The observations made in this order are only for the purposes of deciding present application.

(8)

10. Criminal Application is allowed and
disposed of.

(A.S. CHANDURKAR, J.)

Tupe