

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

CRIMINAL APPLICATION (BA) NO.43 OF 2016

Pankaj S/o Sundarlal Yadav

..vs..

State of Maharashtra (Through PSO PS Gondia City)

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

Court's or Judge's Order

Shri R.M. Daga, Counsel for the Applicant.
Shri V.A. Thakre, Addl.P.P. for NA/State.
Shri P.N. Mehta, Counsel for Intervenor.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 5, 2016.

1. By the present application, the applicant is praying for the orders by this Court invoking the jurisdiction under Section 439 of the Code of Criminal Procedure. The applicant is one of the accused in Crime No.113 of 2015 registered with Police Station Gondia (City) for the offences punishable under Sections 302, 120(B) of the Indian Penal Code; and under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,

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and under Sections 3, 25, and 27 of the Indian Arms Act.

2. I have heard Shri R.M. Daga, learned counsel for the applicant, Shri V.A. Thakre, learned Additional Public Prosecutor for the non-applicant/State, and Shri P.N. Mehta, learned counsel for the first informant.

3. Before advertng to the merits of the present case, few facts will have to be noted.

4. After the registration of the crime against the present applicant, the applicant was apprehending his arrest at the hands of the Police Station Officer of Gondia (City). Therefore, he moved an application for grant of anticipatory bail before learned Judge of the Court below. Since his attempt to secure anticipatory bail was unsuccessful, he approached to this Court by

filing Application No.408 of 2015 and claimed anticipatory bail. This Court on 24.8.2015 allowed the application and released him on bail in the event of his arrest.

5. The prosecution being dissatisfied with the said order, approached before the Honourable Apex Court by filing Special Leave to Appeal (Criminal) No.8435 of 2015.

6. During the pendency of the said SLP before the Honourable Apex Court, it appears that the investigating officer filed challan before the Court of law and, therefore, the present applicant moved an application in Sessions Trial No.79 of 2015 since on that day the case was registered as Sessions Case. In the said application, a prayer was made by the applicant that the applicant be released on regular bail and sureties be accepted.

It appears that learned Judge of the Court below passed an order on 9.12.2015 and accepted the sureties furnished by the applicant in view of the orders passed by this Court on 24.8.2015.

7. When the SLP came up for its hearing before the Honourable Apex Court on 5.1.2016, the Honourable Apex Court observed that learned Judge of the trial Court has granted bail in favour of the applicant only because he was released on anticipatory bail by this Court. Therefore, the Honourable Apex Court directed learned Judge of the Court below to hear the application for regular bail afresh without being influenced with the orders passed by this Court.

8. After the aforesaid order from the Apex Court, the applicant moved an application under Section 439 of the Code of Criminal Procedure before learned Court below afresh and the said application is available on

record of Sessions Trial No.79 of 2015 at Exhibit-25. Learned Judge of the Court below, after hearing learned counsel for the applicant and also learned Additional Public Prosecutor, was pleased to reject the application on 19.1.2016 after passing a detailed order.

9. After such dismissal of the order, the applicant has again approached to this Court through this present application.

10. The submission of learned counsel Shri Daga is that the statement of Kartik cannot be relied upon since his statement is recorded on 4.7.2015. On the said day, he was accused in Crime No.3044 of 2015 and he was shown as absconding by the investigating officer of the said crime. He further submitted that even the statement of Vijay cannot be relied upon since his statement was recorded on 18.6.2015 i.e. much prior to order dated 24.8.2015. He further submitted

that now the investigation is already over and, therefore, the custodial presence of the present applicant is not at all necessary and, therefore, he prayed that the applicant be released on regular bail.

11. Per contra, learned Additional Public Prosecutor and learned counsel Shri P.N. Mehta vehemently submitted before this Court that there is sufficient material against the present applicant to show that the applicant is brain behind hatching the conspiracy to eliminate the deceased. He submitted that the applicant is Councilor in Gondia Municipal Council and he is having his own influence. Further, if the liberty is granted to him to move in the society, there is an apprehension that he will tamper with the prosecution case by influencing the prosecution witnesses and, therefore, they submitted that the application be rejected.

12. In the present case, deceased is one Chhedilal. The first informant is Bhim Imlah who is the brother of the deceased. The first information report is lodged on 13.6.2015. The first information report was lodged at 20:30 hours. The date and time of the occurrence is 13.6.2015 between 18:00 hours to 19:30 hours. Thus, the first information report is lodged immediately. From the FIR it is clear that the first informant is not eyewitness to the incident. However, it is specifically reported in FIR that the applicant is having long standing enmity with the deceased and on the instructions of present applicant deceased is killed.

13. With the assistance of both learned counsel appearing in the present proceedings, I have gone through the charge-sheet which is made available to me. There is a statement of one Shankar Mahadule. This prosecution witness is lawyer by profession. From his statement, it is crystal clear that the present

incident of elimination of deceased Chhedilal is the fall out of the incident that occurred on 17.3.2015 the day on which the present applicant was assaulted by one Kunal Mahawat and Raja Mahesh Chandekar. In that respect, an offence is registered on the basis of the first information report lodged by the present applicant against those two persons for the offences punishable under Sections 307 and 120B vide Crime No.44 of 2015 and those two assailants Kunal and Raja were arrested. The statement of Shankar reveals that the said prosecution witness was appearing for those accused persons in the bail proceedings and the deceased being one of the respected persons of "Sudarshan Samaj" to which the deceased and those two accused were belonging was trying to help out those two accused persons.

14. It is pointed out to me on the basis of the charge-sheet itself that the deceased gave an

application to the Superintendent of Police Gondia by which he sought police protection from the present applicant since he was apprehending danger to his life at the hands of the present applicant.

15. The statement of Vijay Sharma shows that the present applicant and his brother Kallu who is also one of the co-accused are counsellors of Gondia Nagar Parishad. They are counsellors of Ward No.4 and Ward No.5 respectively. These two Wards fall within Ramnagar Zone. The deceased Chhedilal was the incharge of the sanitation work of Ramnagar Zone. The deceased was working in the sanitation department of Gondia Municipal Council. His statement and the other material show that there was long standing dispute in between the deceased and the present applicant on account of the sanitation work. The statement of Vijay discloses that when he was proceeding towards his house, that time he was intercepted at Suryatola

Chowki by one Nishant and Bhuru Yadav who is driver of the present applicant and informed him that he has been called by one “Bhau”. When this prosecution witness questioned about identity of this “Bhau”, it was disclosed to him that there is only one “Bhau” in the Gondia City i.e. the the present applicant. Thereafter, he was taken to one MSM Bar at Yadav Chowk which is liquor bar. There the present applicant, his brother Kallu and other co-accused persons were sitting. That time, fist blows were given to the this prosecution witness on the ground that this prosecution witness was spying on them. Thereafter, against the wish of Vijay, a cellphone call was made to the deceased and Vijay was forced by applicant to disclose to the deceased that the present applicant is going on ring road and, thereafter, the said cellphone was snatched by the present applicant and it was destroyed. Thereafter, again by coercion, the present applicant and others obtained the information from Vijay in

respect of the various places where the deceased normally used to sit. That time, under the threat from applicant this prosecution witness disclosed that normally deceased used to sit at Pathak canteen and pan shop of one Shailu near bus stop.

The spot punchnama duly drawn during the course of investigation shows that spot of occurrence is in front of Pathak Restaurant Gondia.

16. Learned counsel Shri R.M. Daga has submitted that though the statement is dated 18.6.2015, there is no reference of this statement in the order passed by this Court on 24.8.2015 and also in respect of the other statements recorded by the prosecution. Though the submission of learned counsel for the applicant appears to be attractive at the first blush, the said statement are required to be rejected. The order passed by this Court on 24.8.2015 clearly shows that the then learned Addl.P.P. pointed out to

this Court that there are no statements in the investigation paper that the present applicant was “present on the spot”. In that view of the matter, the statement of Vijay and the other prosecution witnesses cannot be viewed with the tinted glasses.

17. The statement of Vijay is duly corroborated by Bhuru who is driver of the present applicant in respect of taking Vijay to SM Liquor Bar on the direction of present applicant. Even Nishant Meshram also states the same who was accompanying Bhuru.

18. Statement of Kartik is also recorded. His statement clearly shows that in his presence two pistols were handed over by one Shekhar and, thereafter, to test the said pistols the fire was opened by the present applicant and brother Kallu. The submission of learned counsel Shri R.M. Daga in respect of this witness is concerned is that the fact that on the day when his

statement was recorded i.e. on 4.7.2015, he was accused in another crime and, therefore, it is hard to believe that his statement was recorded on 4.7.2015, in my view cannot be accepted in view of the submissions made by learned Additional Public Prosecutor that the investigating officer in the said crime was altogether different whereas the present crime is investigated by the SDPO in view of the fact that the present crime also invokes the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Further, it is always open for the prosecution to give the proper explanation in that behalf during the course of the trial.

19. There are two statements of one Abhimanyu and Ajay. The statements of these two witnesses show that they have actually seen the assault made on deceased by Shahrukh by opening a fire. In no way, these two prosecution witnesses are attributing any

overt act on the part of the present applicant. However, at the same time, if these statements are microscopically perused, it shows that the presence of the present applicant though not on the spot, however at some distance from the spot.

20. According to learned counsel for applicant it is submitted that co-accused are released by this Court (Hon'ble Mr. Justice A.B. Chaudhari) in Writ Petition Writ Petition Nos.36 and 70 of 2016 by invoking provision under Section 167(2) of the Code of Criminal Procedure on 2.2.2016. It is his submission that there is no difference between the bail granted on merits and the bail granted in default. Therefore, he prays that on the principle of parity the applicant is entitled for bail.

21. Insofar as the provisions of Section 167 are concerned, in my view, the decision of this Court in said Writ Petition Nos.36 and 70 of 2016 is hardly

beneficial to the present applicant.

22. The custody of the present applicant is required by the prosecution for recovery of another weapon which was handed over to him by person Shekhar in presence of Kartik, is the reply filed by the prosecution. According to Addl.P.P., the investigation thus insofar as present applicant is yet to be completed.

23. The applicant appears to be the brain behind the elimination of deceased Chhedilal. The applicant appears to be the influential person. Looking to his status as Municipal Corporator and all the prosecution witnesses appear to be from lower strata of society, therefore, the apprehension of the prosecution that they can be influenced by the present applicant is not misplaced.

24. Looking to the fact that there is a definite material available in the prosecution case in respect of the motive which the applicant was nurturing in his mind to eliminate deceased Chhedilal and the fact that he has purchased the pistols and handed over to person by name Shahrukh who has opened the fire on him, it all show that the prosecution case is not an hollow one. There is a definite material against the applicant to connect the present applicant in the crime which is very serious in nature.

25. In that view of the matter, I see no reason to exercise my discretion in favour of the present applicant. The application is rejected. The interim order granted by this Court on 21.1.2016 is liable to be vacated and it is vacated accordingly.

26. After passing of the order, learned counsel for the applicant Shri R.M. Daga submits that this Court

should stay the effect and operation of the order passed by this Court today. Looking to the material available against the present applicant, the request is rejected.

JUDGE

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