

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

CRIMINAL APPLICATION [ABA] NO.278 OF 2016

[Anil Dhruwanarayan Lohiya and others .vs. State of Maharashtra]

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

Court's or Judge's orders

Shri Anil S. Mardikar, Senior Advocate with Shri J.B. Gandhi, Advocate for
the Applicants,
Shri T.A. Mirza, A.P.P. for the non-applicant-State,
Shri Shyam Dewani, Advocate for the intervenor-complainant.

.....

CORAM : S.B. SHUKRE, J.

DATED : SEPTEMBER 28, 2016.

Heard the learned senior counsel for the applicants and the learned A.P.P. for the non-applicant-State as also the learned counsel for the intervenor-complainant. Perused the paper book of this application and the papers produced before me by the learned A.P.P. I have also gone through the reply of the prosecution.

Upon consideration of the facts and circumstances available on record and also the conclusions drawn by the learned Additional Sessions Judge, Khamgaon in the order dated 22.4.2016 deciding the Bail Application (Anticipatory) No.75/2016, I am of the view that in respect of the disputed property, the complainant appears to be *prima facie* having a better claim in respect of title as well as of possession.

The report dated 12.3.2016 shows that on 11.3.2016 an attempt was made to forcibly take over the possession of the disputed property, as is seen from the report, and that was going on since before 11.3.2016. There

is also allegation of commission of theft of certain articles kept in the disputed property. The allegations have been made against applicant no.1, applicant no.2, one Sunil Lohiya and applicant nos.3 and 4. However, Sunil Lohiya has been granted anticipatory bail by the Court of Additional Sessions Judge, Khamgaon.

Considering the nature of allegations made against applicant nos.3 and 4, I find that they are also similarly situated, as the co-accused Sunil Lohiya, who has been granted bail by the court. Therefore, applicant nos.3 and 4 will be entitled to be released on bail by giving them the benefit of principle of parity.

As regards applicant no.1, I find that although there have been allegations against him that he along with Sunil Lohiya and others tried to dispossess the complainant and even to threaten the complainant with dire consequences, it is not clear from the reply of the prosecution as to exactly what was done by him, as distinguished from the role played by the co-accused Sunil Lohiya, in committing the offence relating to the criminal trespass and theft. There is, however, specific allegation made against him about his threatening the complainant, but for that matter, I do not think that custodial interrogation of applicant no.1 - Anil Lohiya is necessary.

Learned counsel for the complainant submits that his custodial interrogation is also necessary, as all the documents, which have been alleged to be forged by the complainant, stand in the name of applicant no.1 - Anil Lohiya.

I must say, in the report dated 12.3.2016, there is no mention about the commission of the act of forgery specifically by the applicant no.1 in relation to the documents which now have been filed on record. Therefore, the submission that the applicant no.1 has forged certain documents, would have no relevance to the determination of question involved here.

Hence, I am of the opinion that even applicant no.1 could be released on anticipatory bail.

What has been found *prima facie* in this case in relation to the applicant nos.1, 3 and 4 may not be so as regards applicant no.2.

As regards applicant no.2, learned senior counsel seeks leave of the court, on instructions, to withdraw the application of applicant no.2.

In the result, the application is partly allowed. Application of applicant no.2 - Kishor Pande is allowed to be withdrawn and disposed of as such.

Application of applicant nos.1, 3 and 4 is granted and the interim bail granted to these applicants by this court on 2.5.2016 is hereby confirmed on the same conditions and further with the condition that they shall attend the Police Station every day for a period of two weeks between 11 am to 1 pm starting from 3.10.2016 and, thereafter, on such occasion as may be required.

JUDGE

CERTIFICATE

"I certify that this order uploaded is a true and correct copy of original signed order."

Uploaded by : A.S. Gulande, P.A. Uploaded on : 29.09.2016