

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

CRIMINAL APPLICATION (BA) NO. 477 OF 2016

(Shivaji Mahadeo Koli Vs. The 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 Mardikar, Senior Advocate for the applicant.
Shri A. M. Deshpande, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.

DATED : 27 JULY, 2016

Heard.

It is seen from the first information report lodged at police station Dabki, Akola on 02/12/2015 that initially the offences punishable under Sections 417, 420 read with Section 34 of the Indian Penal Code were registered against this applicant and others on the allegation that this applicant was one of the persons who induced the complainant to donate his kidney by undergoing a transplantation surgery in a third country, namely Shrilanka against the compensation of Rs.4 lakh and this applicant and the other co-accused failed to completely keep the promise of payment of Rs.4 lakh and only paid Rs.3 lakh as compensation to the applicant and thus the applicant and others cheated the complainant. As the investigation progressed, the investigating officer

found that this applicant was also involved in inducing some other persons in donating kidney in illegal manner and that this applicant and other persons were part of a racket of illegal kidney donation in India and so an offence punishable under Section 370 of the Indian Penal Code, relating to recruitment or transportation or trafficking of person by threats or abduction by practicing fraud for the purpose of exploitation, was also registered against the applicant and his associates.

A perusal of the complaint prima facie discloses that complainant Santosh Gawali was made to agree to donate his kidney by practising fraud or by using threats by Anand Jadhav from whom Santosh Gawali had borrowed an amount of Rs.20,000/-. It is the allegation of Santosh Gawali that as he was not able to repay the borrowed amount together with interest to Anand Jadhav and as he was threatened with dire consequences by Anand Jadhav, he was compelled to agree to the proposal of Anand Jadhav for donating his kidney in lieu of some monetary compensation and this is how, the associates of this applicant, particularly Devendra Sirsat, came into the picture. Thus, the initiator and conceiver of the offence registered in this case is Anand Jadhav. It is significant to

note here that although the allegations of running an illegal racket of kidney transplantation are made against this applicant, the investigating officer has not invoked the provisions of the Transplantation of Human Organs Act, 1994. So, there would be no question of considering the submission of the prosecution that this applicant is also involved in the illegal racket of kidney transplantation in as much as no investigation in this regard, whatsoever, appears to have been made.

Coming back to the case of the prosecution as against Anand Jadhav, it is seen from the record, this accused, rather the main accused, has been granted bail by the learned Additional Sessions Judge, Akola. It is seen from the order passed by the learned Additional Sessions Judge on 29/4/2016 granting bail to Anand Jadhav with such considerations, as; non filing of the complaint by the appropriate authority or any empowered officers, absence of 60 days notice being given to the appropriate authority, no requirement of custodial interrogation being there, no possibility or likelihood of absconding Anand Jadhav and no possibility of Anand Jadhav tampering with the prosecution witnesses being there, weighed with the learned Additional Sessions

Judge, Akola. The learned Additional Sessions Judge, Akola also noted that the provisions of the Transplantation of Human Organs Act were not invoked. However, while rejecting the bail application of this applicant, learned Additional Sessions Judge took a completely contrary stand and rejected his bail application. According to him, this applicant indulged in racketeering of kidney transplantation in an illegal manner and the example of transplantation of kidney of one Santosh Gawali to Raghavendra Verma has been cited. Such an approach of the learned Additional Sessions Judge is obviously discriminatory. While granting bail to the main accused, Anand Jadhav, there were no considerations of involvement of racketeering as the provisions of the Transplantation of Human Organs Act were not applied. Whereas, same reason of racketeering was cited for rejecting bail to this applicant. The prosecution has not challenged the order granting bail to the main accused Anand Jadhav. The case of this applicant cannot be distinguished from the case of Anand Jadhav, as seen from the complaint made by Santosh Gawali.

In fact, the case of this applicant stands even

on a better footing as except for mentioning the presence of this applicant in Colombo and giving of promise of payment of compensation to the complainant, no such allegation as this applicant threatening the complainant with dire consequences or practising any fraud against him have been made against this applicant. Therefore, I am of the view that this applicant is entitled to be given the benefit of principle of parity and on that ground alone, he deserves to be granted bail.

In addition to the above referred grounds, perusal of the F.I.R. disclose that there are no allegations made against this applicant, as stated earlier, regarding giving of threats or practising any fraud or use of deception and so on and, therefore, it is doubtful if the offence punishable under Section 370 I.P.C. would be made out. In any case, custodial interrogation of the applicant is not required. The applicant is admittedly living with one kidney and it is stated by the learned Senior Counsel for the applicant that he has also been suffering from severe ailment of diabetes and it is likely to cause a debilitating effect upon a person having only one kidney. All these facts and circumstances could be considered as the grounds for grant of bail to this

applicant.

In the circumstances, I am inclined to allow this application and it is accordingly allowed.

It is directed that the applicant be released on bail on his furnishing a P. R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount on the conditions that; he shall regularly attend the Court on the dates fixed in the matter, except on those dates when he is exempted from appearing, in accordance with law, he shall cooperate with the trial Court in expeditious disposal of the case against him, shall not tamper with the prosecution witnesses and shall not leave India without permission of the Court.

JUDGE



CERTIFICATE

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