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

Criminal Application [BA] No.710 of 2016

(Ishwar Sardar Rathod and another
vs.
State of Maharashtra, through P.S.O. Umred, Nagpur)

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Shri Mir Nagman Ali, Advocate for the Applicants.
Shri A.M. Deshpande, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 3rd OCTOBER, 2016.

Heard the learned Counsel for the applicants and the learned A.P.P. for the State.

Perused the charge-sheet, which has been filed on 6th August, 2016.

This application has been opposed by the learned A.P.P. on the ground that even though the co-accused Vilas Rathod and Suresh Pawar as well as Laxman Rathod have been granted bail by this Court earlier, to be precise on 5th May, 2016 and 1st April, 2016, the D.N.A. report shows a different picture, which perhaps was not taken into the account previously by this Court. The learned Counsel for the applicants submits that entire investigation in this case is launched, as the Investigating Officer has recorded identical statements of witnesses namely Lalsingh Jadhav and Duryodhan Jadhav, without even bothering to change the relevant sentences. As for example, Duryodhan

Lalsingh Jadhav is the son of Lalsingh Vithoba Jadhav, when Lalsingh Jadhav said that at the relevant time his son, Duryodhan Jadhav approached him and dragged him inside the house, his son Duryodhan Lalsingh Jadhav also stated the same things, when he said that his son Duryodhan Jadhav (this statement is being made by none other than Duryodhan Jadhav) approached him and dragged him inside the house. He also illustrated the point by inviting my attention to the Arrest-Panchnama of different accused and Seizure-Panchnama of the different accused. In case of Ishwar Rathod, the applicant No.1, in the Arrest-Panchnama dated 14/04/2015 drawn between 3:20 a.m. and 3:40 a.m of 15/05/2015, this accused has been shown as wearing full shirt and full pant, and whereas the Seizure-Panchnama in respect of this accused drawn at 3:40 a.m. of 15/05/2015 shows that one white full pant and one white half shirt have been seized and these clothes have been stated to be the clothes worn by this accused at the time of commission of offence. Admittedly, these clothes have not been seized as a part of discovery statement made under Section 27 of the Indian Evidence Act. Similarly, in case of other co-accused Vilas Rathod, the Arrest-Panchnama drawn between 03:00 a.m. and 3:10 p.m. of 15/05/2015 shows that this accused was wearing a shirt and the jeans and the Seizure-Panchnama drawn at 03:20 a.m. of 15/05/2015 shows that one black bermuda and

one heena colour T-Shirt have been seized stating that these were the clothes worn by one by Vilas Rathod at the time of commission of crime. Admittedly, these clothes have not been seized as a part of discovery made by Vilas Rathod under Section 27 of the Indian Evidence Act. Same is true about Bandu Pawar. The Investigating Officer, for making these wonders in the investigation, owes an explanation to the society. A proper enquiry into the flawed investigation is required to be conducted at the higher level and in my view the Inspector General of Police, Nagpur Branch, Nagpur would be the appropriate authority for ordering an enquiry into the matter.

Accordingly, it is directed that the Inspector General of Police, Nagpur Branch, Nagpur shall order an enquiry into the matter and take appropriate steps including the departmental action, if warranted by the facts and circumstances of the case, so that the society does not suffer for the mistakes or the negligence, committed in the matter.

Meanwhile, there is no reason to believe that these applicants stand on a different footing than those already released on bail. Accordingly, in these circumstances, this application deserves to be allowed and it is allowed. Hence, the order.

It is directed that the applicants be released on bail on each of them furnishing a P.R. Bond in the sum of

Rs.15,000/- together with one solvent surety in the like sum on the conditions that the applicants shall attend the trial Court regularly on the dates fixed in the matter, shall co-operate with the Court in expeditious disposal of the case and shall not tamper with the prosecution witnesses in any manner.

The application is disposed of accordingly.

sdw* **JUDGE

C E R T I F I C A T E

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

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 04/10/2016