

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

CRIMINAL APPLICATION (BA) NO.777/2016

Sumit Baburam Yadav Vs. State of Maharashtra, through P.S.O., P.S.Sitabuldi,
Nagpur.

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

Court's or Judge's orders.

Mr. D.V.Chauhan, Advocate for applicant.
Mr. T.V.Mirza, A.P.P. for non applicant/State.

CORAM : S. B. SHUKRE, J.
DATE : OCTOBER 25, 2016

Heard the learned counsel for the applicant and the learned A.P.P. for non applicant/State. Perused the charge-sheet.

One of the co-accused namely Prakash Ramesh Sukanpatre has been granted bail by this Court by order passed on 29.07.2016 in Criminal Application (BA) No.212/2016. In so far as the role played by this applicant in the present crime is concerned, on perusal of the charge-sheet, it appears to be not different than the one played by Prakash Ramesh Sukanpatre. Therefore, on the parameters of existence of prima facie involvement and its extent, this applicant is similarly situated to Prakash Ramesh Sukanpatre.

The learned A.P.P. for the State has

submitted that because of filing of several charge-sheets against this applicant previously, his position becomes different than that of the said co-accused and on this ground, he urges that this applicant does not deserve to be released on bail. He also submits that acquittals or convictions are not relevant for registration of offence under the provisions of M.C.O.C. Act.

The learned counsel for the applicant submits that in all the charge-sheets filed previously, except one, filed independently against this applicant for an offence punishable under Section 324 and other minor offences of the IPC, the applicant has been acquitted by the Criminal Courts. He further submits that since the charge-sheet, which is pending against this applicant, has no nexus with the offence punishable under Section M.C.O.C.Act, this applicant is entitled to be released on bail, especially when, there is no material present on record showing that the applicant was, prima facie, involved in the commission of the offence of murder by being one of the conspirators.

I think learned counsel for the applicant is right. Firstly, the Court would have to consider the nature of material available on record, whether or not it shows any, prima facie, involvement of the applicant in the crime alleged against him and other

conspirators will come later. The confessional statement of one Akash shows that this applicant was present in the room where the main accused hatched conspiracy to eliminate deceased Malik Khatwani. There is also a statement of one hidden witness, which indicates that this applicant was present along with other co-accused and some of them pointed finger at the shop of Bharat Khatwani while uttering something. These two statements by these persons would not be, prima facie, sufficient to indicate the fact that this applicant was also one of the conspirators. There is a difference between being present in the room where some discussion is going on and being a part of the discussion and agreeing with the conclusions thereof. Therefore, on the parameter of prima facie involvement, as stated earlier, the position of this applicant could not be distinguished from that of Prakash Ramesh Suganpatre. As such, there is doubt about his prima facie involvement in the crime. It would then mean that pendency of a charge-sheet for any crime committed in the past would not come in the way of the applicant in securing bail under Section 439 of Cr.PC. On these grounds, I am of the view that this applicant deserves to be released on bail.

The application is allowed.

It is directed that the applicant be released

on bail on his furnishing a P.R.Bond in the sum of Rs.20,000/- together with one solvent surety in the like sum, on the condition that the applicant shall attend the courts dates regularly fixed in the matter, shall co-operate with the trial Court for expeditious disposal of the case and shall not tamper with the prosecution witnesses in any manner.

JUDGE

Andurkar

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: J.S.Andurkar.

Uploaded On:26.10.2016