

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

CRIMINAL APPLICATION (BA) NO.1044 OF 2016

Samir s/o Pralhad Sharma, Ambedkar Marg, Near Saroj Khaparde House, Nagpur (In Jail)

-vs-

State of Maharashtra, Thr. PSO, PS Sitabuldi, Nagpur

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

Court's or Judge's Orders.

Shri V. S. Mishra, Advocate for applicant.

Shri V. G. Gangane, Addl.PP for non-applicant-State.

CORAM : P. N. DESHMUKH, J.

DATE : December 14, 2016

This application is filed by accused in Crime No.517/2016 registered with Sitabuldi Police Station for the offence punishable under Sections 143, 147, 148, 149, 307 of IPC registered on the basis of report lodged by one Pawan Choudhary.

Learned counsel for the applicant in pursuance of order dated 13/12/2016 has placed on record additional affidavit-in-reply in support of application in relation to case of prosecution of applicant not complying with order passed by the Additional Sessions Court while releasing him on bail in Crime No.196/2016. Same is taken on record.

It is specific case of applicant that prior to lodging of such report by Pawan Choudhary, applicant on 13/11/2016 had lodged report with the same police station on the basis of which Crime No.510/2016 came to registered for the offence punishable under Sections 307, 143, 147, 148, 149, 437 and 504 of IPC. It is contended that during the course of investigation, complainant Pawan Choudhary on 18/11/2016 who was accused has lodged report against the applicant alleging the applicant to have fired gun shot towards him and his friends at Lahori Bar and Restaurant when he along with his friends went to said spot for compromising earlier matter.

In the background of above stated contentions, on perusal of report as well as documents on record, it appears that on 13/11/2016 applicant was assisting owner of Lahori Bar and Restaurant in running said business. On that day it is alleged that 7-8 persons came to the hotel armed with wooden sticks and hockey and started quarreling with one boy who had visited said hotel with his girlfriend and in that event to control the situation, applicant had fired gun shot. The person with

whom there was quarrel at that point of time thereafter involved others including the complainant Pawan Choudhari who on 18/11/2016 has lodged report against applicant as aforesaid.

Admittedly involvement of applicant in this crime is only by way of his firing gunshot which prima facie appeared to have fired by the applicant to control the mob. The learned trial Court while considering application for bail appears to have weighed much on the point that applicant has fired gunshot and considering that investigation is at initial stage rejected the applicant on bail.

Learned Addl. Public Prosecutor on a specific query put to him on instructions made a statement that that investigation is almost complete and charge-sheet is likely to be filed within fifteen days.

Admittedly applicant before being committed to judicial custody was in police custody remand for a period of eight days and admittedly nothing incriminating is seized from his possession. In fact, no explanation is put forth on behalf of prosecution for non-recovery of shot gun if any,

possessed by applicant during the custody period.

Considering the involvement of applicant as aforesaid, and having considering conduct of complainant Pawan Choudhary lodging report against applicant five days after the incident, attributing role to applicant to have fired a gunshot, though investigation is in progress, for the reasons as aforesaid, applicant is liable to be released on bail by imposing suitable conditions. Moreover, three co-accused involved in Crime No.517/2016 registered against applicant along with others are already released on bail by the Sessions Court, who are employees of the hotel.

With regards to case of prosecution that applicant has not abided with conditions imposed upon him by the learned trial Court in Crime No.196/2016 earlier registered against him, has placed on record affidavit. On perusal of it, it is found that applicant in compliance with said order had visited the Investigating Officer on three occasions. However, it is specifically stated that thereafter he was instructed by Investigating Officer that his presence was no more required and that applicant would be called if required. In that view of the

matter and since no further instructions were received from Investigating Officer directing applicant to attend, there appears no reason for him to mark his presence though he was always willing to co-operate investigating agency.

In view of facts as aforesaid, it is noted that there is no willful disobedience of order as alleged by the prosecution. In that view of the matter following order is passed :

- i) Application is allowed.
- ii) Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- iii) The applicant shall mark his presence with Investigating Officer of Police Station Sitabuldi, Nagpur, as and when called till filing of charge-sheet and shall co-operate with investigation.
- iv) Applicant shall produce proof of his residence and shall update the same if there is change in future.
- v) Application is disposed of in aforesaid terms.

JUDGE