

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICAITON NO. 6119 of 2017.**

GOVIND TULSHIRAM KOKULWAR

VERSUS.

STATE OF MAHARASHTRA

...

Advocate for the Applicant : Mr. R.S. Deshmukh, H/f Mr.
T.M. Venjane, Advocate.

APP for Respondent/State : Mr. A.D. Namde.

CORAM : V.L. ACHLIYA, J.

DATE : 27th November, 2017

ORAL ORDER :

1 The applicant apprehending arrest in connection with Crime No. 344/2017 registered at Bhagyanagar Police Station, District Nanded, for the offences punishable under sections 307, 143, 147, 148, 149, 109 of the Indian Penal Code and under section 4/25 of Indian Arms Act, has preferred this application seeking anticipatory bail.

2 Heard learned counsel for the applicant and the learned APP for the respondents/State. Perused the papers of investigation as well as order passed by learned Additional Sessions Judge, Nanded, rejecting the application filed by the applicant and grant of bail to co-accused.

3 In nutshell it is the contention of the learned counsel for the applicant that applicant is victim of political animosity and rivalry. He submits that the son of the applicant contested the election against informant in which he was elected with margin of more than 200 votes. He submits that in order to take revenge of defeat in municipal election, the informant has falsely implicated the applicant by lodging complaint and making false allegations against him. He submits that in the first information report the only role attributed to applicant is that at the time of assault the assailants told the informant that they have been asked by applicant to finish him, as during the election of Municipal Corporation he made false complaint against the applicant. He submits that the applicant is neither shown present at the time of assault nor any overt act has been attributed to him in assaulting the informant. He further submits that it is no where the case of the prosecution that a criminal conspiracy was hatched and assault on informant was pursuant to such criminal conspiracy. So also no offence of criminal conspiracy is registered by prosecution. It is further contended that for conduct of investigation, the custodial interrogation of

applicant is not necessary. Co-accused are already released on bail.

4 It is further pointed out that while releasing the main accused i.e. the assailants the learned Sessions Judge Nanded has observed that, in the facts and circumstances of the case offence under section 307 of IPC is not attracted against the assailants. On due consideration of overall facts of the case, the evidence on record, learned Sessions Judge has released them on bail vide order dated 14.11.2017 passed in Criminal Application Nos. 659/2017 and 664/2017. In this background the learned counsel argued that considering the overall facts of the case, the applicant deserves to be granted anticipatory bail.

5 On the other hand learned APP has opposed the application with contention that name of applicant is mentioned in the first information report. So also the informant and other injured witnesses have stated in their statement that before assaulting the informant and other injured the assailants/accused have stated that they have been asked by the applicant to finish them. He further submits that there are three criminal cases registered against the applicant and urged to

reject the application.

6 In counter to the submission advanced, learned counsel submits that in all the three cases the applicant has been acquitted.

7 On due consideration of the submissions advanced in the light of observations recorded by the learned Sessions Judge Nanded while passing order dated 14.11.2017 in Criminal Application Nos. 659/2017 and 664/2017, I am of the view the applicant deserves to be granted anticipatory bail. The observations recorded by the learned Sessions Judge reads as under :

“The only ground on which the judicial custody is sought for is that the police wants to arrest the remaining accused. Considering the peculiar nature and gravity of offence, I find that no valid purpose would be served by detaining this accused in judicial custody. Similarly, the accused is aged just 19 years and if he comes in contact with the harden criminals lodged in the jail, his personality is likely to be damaged adversely. For refusal of bail, there should be some strong reason for which the Court can curtailed liberty of a person guaranteed under constitution. Having regards to the role individually also of this accused, I find that individually at the most,

the offence under section 324 of the Indian Penal Code could be attracted or if the particular acts are seen from the angle of group liability, then also there is no assurance that the trial would be completed in near future. Hence in the given circumstances, I find that this is a fit case in which the accused could be enlarged on bail."

8 It is rather surprising that while dealing with application filed by the prime accused i.e. assailants, the court has observed that in the facts and circumstances of the case at the most offence under section 324 of IPC is attracted. In fact the assailants are attributed specific role in commission of the offence which includes use of weapon in assault made in assaulting the informant and other co-accused. Whereas the role attributed to applicant only confines to instigation made to assault the informant. Although no offence of conspiracy is registered, still observations are made that the applicant is a conspirator and perpetrator of crime. During the course of submission, learned counsel for applicant invited attention to copy of letter at Exh.'F' wherein the A.P.I. Itwara Nanded police station has submitted report that no incident of distribution of money to voters detected during the course of enquiry made pursuant to complaint lodged by

informant against applicant during the municipal election. It is pointed out that in first information report the allegations have been made that on account of distribution of money on 08.10.2017 on the eve of election of Municipal Corporation a quarrel had taken place between the applicant and informant which leads to assault the informant. As per report no such incident had taken place and complaint made to that effect by informant found to be false.

9 Thus on due consideration of over all facts and circumstances of the case and the co-accused are already released on bail and the role attributed to applicant in commission of offence is purely based upon the utterances of co-accused, I am inclined to allow the application. Grant of anticipatory bail will not hamper on going investigation, as nothing is to be recovered from the applicant. Investigation of the case is practically over. Hence, following order is passed.

ORDER

1. Application is allowed.
2. In the event of arrest of the applicant in connection with Crime No. 344/2017 registered at

Bhagyanagar Police Station, District Nanded, for the offences punishable under sections 307, 143, 147, 148, 149, 109 of the Indian Penal Code and under section 4/25 of Indian Arms Act, the applicant be released on his furnishing bail in the sum of Rs. 25,000/- with one surety in the like amount, on following condition.

- (i) Applicant shall appear before the Investigating officer from 29.11.2017 onwards till 03.12.2017 in between 11 a.m. to 2 p.m. and cooperate in investigation.
- (ii) The applicant shall not indulge into any act amounting to tampering the prosecution witnesses and causing threat to complainant.
- (iii) Till filing of charge-sheet the applicant shall not enter into local limits of Nanded city except for the purpose of attending the police station in compliance of this order.
- (iv) Applicant shall not indulge into offences similar in nature during the pendency of proceeding against him.

10. Criminal application stands disposed of in above terms.

(V.L.ACHLIYA, J.)

mkd/-