

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 542 OF 2016

Dhupraj @ Dhurupraj Uri Mourya @ Morya	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr.H.H.Ponda, Advocate for the applicant.
Mrs. P.P.Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 13th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 13.6.2014 in Crime No.234 of 2014 registered at Narpoli Police Station, Bhiwandi, Dist. Thane. The investigation is completed and charge-sheet is filed against the applicant and other accused for the offences punishable under Sections 395, 397, 342, 120B of the Indian Penal Code and Section 3(1), 3(2), 3(4) read with Section 25 of the Arms Act.

2. In the course of investigation, the investigating agency had filed a proposal to prosecute the present applicant along with others under the provisions of MCOCA. The sanction was accorded on 27.8.2014 and the applicant is being prosecuted for the same.

3. It is the case of the prosecution that on 5.6.2014, one Mohan Radhe Shyam Prasad was working as a labour in the Manish compound lodged a report at the police station that on the date of the incident after his daily routine was completed, he went to sleep on the terrace of the said building. That in the said building, there are godowns where the raw material for manufacturing medicines are stored and dispatched as per the order. That at about 2 a.m. in the intervening night of 4.6.2014 and 5.6.2014, when he was sleeping on the terrace two persons had reached the terrace. They had attempted to tie hands and legs of the informant. He was resisting assault and at that time they had called upon their associates who went to the terrace, assaulted him and brought him on the ground floor where the informant saw that the watchman of the said building was also being assaulted. The said miscreants had taken him to Parm Pharma Building No.2, 2nd floor, Gala No.21. There also he saw that the watchmen were tied. The said miscreants had used Gas cutters and opened the window door. The informant was assaulted with chopper. Thereafter, the miscreants had taken away 48 fibre drums containing 25 kgs. Doxycycline Medical Powder i.e. total 1200 kg. of Aserdiyoskicloric Acid Medical Powder. On the basis of the said information, investigation was set in motion and the applicant was arrested on 13.6.2014.

4. The papers of investigation would indicate that on 9.6.2014, the police had raided one room owned by Yesubai Patil and they had found the stolen goods i.e. white coloured medicine powder filled in small bags. Upon enquiry, she has disclosed that 10-12 days prior to the incident, one Bhaiya had approached her and informed her that his owner Dhupraj (present applicant) wanted a room on rent for storing goods. He had come along with Narayan Warkute who was acquainted with Yesubhai. She had given room on a rent of Rs.500/-. The statement of Narayan Warkute was recorded and he has also disclosed that one Bhaiya had approached him and that he was seeking a godown on rent for Dhupraj Mourya. It is on this basis the investigating agency could reach the present applicant.

5. The learned counsel for the applicant submits that it is an admitted position that the applicant is the proprietor of Pooja Chemicals situated at Bhiwandi. That he stands prosecuted in Crime No.138 of 2013 and 142/2013 registered at Narpoli Police Station for the offences punishable under Sections 454, 457, 380, 411, read with Section 34 of the Indian Penal Code and in Crime No.78 of 2014 registered at Narpoli Police Station for similar offences.

6. The learned counsel for the applicant submits that as far as

Crime No.234 of 2014 is concerned, it is an admitted position that the applicant was not in Mumbai or Thane, but was in U.P. on the day of incident. He is not involved in the present case. It is also submitted that it cannot be said that the applicant is a member of the organisation which is run by Salim Fateh Mohd. Ansari @ Salim Hakla as he is not being prosecuted in any of the cases along with Salim Ansari or any members belonging to his organisation. It is also submitted that the accused in Crime No.78 of 2014 and 142/2013 also different, but they are not being prosecuted along with Salim Ansari. Therefore, it cannot be said by any stretch of imagination that the applicant belongs to the organization of Salim Ansari. It is also submitted that the evidence against the present applicant is weak in nature as there is only hearsay evidence in the form of statements of Narayan Warkute and Yesubai Patil. It is also submitted that the person named Bhaiya has not been examined under Section 161 of Cr.P.C. in the course of investigation and, therefore, the said statements cannot be relied upon for further incarceration of the present applicant.

7. As against this, the learned APP submits that in the present case, what is stolen is the medicine powder. That the applicant is a trader in chemicals and the theft is of raw material required for manufacturing of medicines. It is also submitted by the learned APP that both the witnesses

namely Yesubai Patil and Narayan Warkute have specifically named the present applicant as the person who had taken the said room on rent for the purpose of stocking. It is also submitted that the applicant was arrested on 13.6.2014 and during his personal search, his cellphone was seized bearing No.930376334 and it was revealed that on the day of incident, the applicant was in U.P. However, before the incident as well as after the incident, he was in constant touch with Salim Ansari. The learned APP therefore, submits that this is an incriminating circumstance against the applicant which would clearly indicate that in all such activities he is involved along with Salim Ansari.

8. Thd affidavit is filed by learned APP stating therein that the investigating agency has recorded statement of one Tribhuvan who is also a dealer in chemicals and medicines and he has admitted before the police that he has purchased medicines and chemicals from the present applicant i.e. Pooja Chemicals at Bhiwandi. he had purchased goods worth Rs.29 lacs from Pooja Chemicals and is indebted to pay Rs.44 lacs more.

9. Taking into consideration the fact that the material collected in the course of investigation as well as the submissions advanced across the bar, it can be safely inferred that the present applicant is involved in the crime. The communication between Salim Ansari and the applicant before

and after the investigation would clearly indicate that the applicant is not only a trader but is an active member of organisation and the organisation had stolen the raw material and medicine powder for the applicant. The learned counsel for the applicant has submitted that the possibility that the organisation had contacted the applicant only to probe the possibility as to whether he would be interested in purchasing the said material would clearly indicate that the applicant is in a habit of purchasing stolen medicinal powders and medicinal compounds. Moreover, the room from where the powder was seized was rented at the behest of the present applicant. In view of the observations made hereinabove, the applicant does not deserve to be enlarged on bail. Hence, the application being sans merits, stands rejected.

(SMT. SADHANA S.JADHAV, J.)