

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (BA) NO.9 OF 2017.

Nayan Dadaji Chintalwar

..VS..

The State of Mah. thr.P.S.O.,P.S.Ajani.

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

Mr.R.K.Tiwari, Adv. for the applicant.

Mr.Vishal Gangane, APP for the State.

CORAM : P.N. DESHMUKH, J.

DATE : 14th FEBRUARY, 2017.

1. This is an application for grant of bail filed by one of the accused involved in Crime No.172 of 2011, registered at Police Station Ajni, Nagpur, for the offence punishable under Sections 302, 143, 147, 149, 120B of the Indian Penal Code, read with Sections 4 and 25 of the Arms Act and under Section 135 of the Bombay Police Act.

2. Heard learned counsel for the applicant and learned Additional Public Prosecutor for the State.

3. It is submitted that there are total thirteen accused involved in this crime, out of which, twelve are acquitted on trial. It is further submitted that, initially, an anticipatory bail was granted to applicant which was subsequently cancelled and since applicant was absconding, his trial was separated and was

proceeded against remaining twelve accused persons. Learned counsel for the applicant submitted that out of four eyewitnesses, examined by prosecution, PWs Pavan and Rohit did not support the case of prosecution. However, the learned trial Court relying upon evidence of eyewitness Vivek Masarkar, convicted two accused persons out of twelve tried together, and acquitted remaining ten accused persons. It is contended that two accused persons, who were convicted, challenged their conviction while complainant filed an appeal challenging acquittal of ten accused persons. Both the appeals are stated to be heard by the Division Bench of this Court and it is further contended that appeals filed by the convicted accused persons are allowed by disbelieving evidence of complainant. It is also contended that Vivek, the alleged eyewitness, is also disbelieved. Learned counsel for the applicant, therefore, submits that considering the nature of evidence available against applicant, application be allowed.

4. Learned Additional Public Prosecutor opposed the application as per reply filed on record and contended that applicant was absconding and that was the reason he could not be tried along with other co-accused and has submitted that if application is allowed, there is every possibility of applicant being absconding.

5. In view of facts as aforesaid, it is found that, admittedly, out of twelve accused persons who faced the trial, ten are acquitted by the trial Court, while two accused persons, who are convicted by the trial Court, are also acquitted since

their appeals are allowed by Division Bench of this Court. Admittedly, there is no further challenge to the judgment of Division Bench of this Court which has, as such, reached finality.

6. Perusal of report lodged by Rajesh, involvement of applicant is of his committing assault by sword on the head of deceased Ganesh @ Pinku. In addition to present applicant, seventeen other co-accused are named in the report. However, from the judgment of the Division Bench of this Court it is found that complainant is not relied and hence, in fact, is also not relied to be an eyewitness. In that view of the matter, involvement of applicant as an assailant of deceased on head by sword would not come in his way for the purpose of present application.

7. Similarly, out of seventeen accused persons named in the report, admittedly, eight are not charge-sheeted. Therefore, it is prima facie found that the complainant has tendency involving innocent persons.

8. It appears that though the trial Court convicted two accused persons, on relying upon evidence of eyewitness Vivek Masarkar, his evidence is also not relied by the Division Bench while acquitting them. Having considering the nature of evidence as aforesaid, there is no propriety of keeping applicant behind bars pending trial and that ground put forth by prosecution of possibility of applicant fleeing from justice by itself would not be sufficient to reject the application. In that

view of the matter, application is allowed by imposing suitable conditions upon the applicant, as per following order.

Applicant Nayan Dadaji Chintalwar shall be released on bail in Crime No.172 of 2011, registered at Police Station Ajni, Nagpur, on his executing P.R.bond in the sum of Rs.50,000/- with one surety in the like amount.

While on bail, applicant shall mark his presence with Ajni Police Station on every Monday between 5 p.m. and 8 p.m. pending trial and shall not leave the limits of Nagpur city until further orders.

Needless to say that the applicant shall attend the dates before the trial Court without fail and in the event it is brought to the notice of this Court that applicant is not attending before the trial Court, order granting bail shall automatically stand cancelled without reference to this Court.

The application stands disposed of accordingly.

In view of disposal of this application, Criminal application (APPP) No.24 of 2017 stands dismissed as infructuous.

JUDGE

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