

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

CRIMINAL APPLICATION (BA) NO.42 OF 2017.

Girish Lakhanlal Agnihotri

..vs..

State of Mah.thr.PSO,P.S.Wardha City, Distt.Wardha.

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

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Mr.Firdos Mirza Advocate for the applicant.  
Mr.N.B.Jawade, APP for the State.

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**CORAM :    P.N. DESHMUKH, J.**  
**DATE :    3<sup>rd</sup> FEBRUARY, 2017.**

1.            One of the accused involved in Crime No.356 of 2015 registered at Police Station Wardha City, Distt.Wardha for the offence punishable under Sections 147, 148, 149, 341, 302 of the Indian Penal Code has applied for grant of bail.

2.            It is submitted that, according to charge-sheet, involvement of applicant is based on circumstantial evidence. Admittedly, there is no eyewitness to the incident of assault on deceased Ajaysingh Thakur which took place on 2<sup>nd</sup> of August, 2015. It is contended that applicant is not named in the FIR and his involvement is shown only on the basis of statements of some witnesses to the effect that he is a conspirator with other co-accused in commission of murder of Ajaysingh Thakur. Learned counsel further contended that even from the alleged CDR on

record it is impossible to say that the Cell Number referred to applicant is of his only, as according to prosecution's own document enquiry appears to have been made with reference to some other Cell Number and not of applicant. It is therefore submitted that merely because applicant had strained relations with deceased Ajaysingh, he is falsely involved in present crime and has submitted that in fact according to the statements of mother and sister of deceased, deceased himself was a criminal element, as such possibility of assault upon him by someone else also cannot be ruled out. Application is also pressed on the ground of ill-health of applicant who is stated to be admitted in the hospital at Sevagram by the jail authorities and has therefore contended that as the nature of evidence available against applicant does not establish his complicity in the present crime, application be allowed by imposing suitable conditions.

3. Learned Additional Public Prosecutor opposed the application as per reply filed on record and by referring to the statements of mother and sister of deceased has submitted that the applicant was instrumental in commission of murder of deceased and by referring to statements of Rakhi and Anup has submitted that from their statements it is established that both these witnesses few hours prior to incident of assault on deceased had apprehended the assault upon him by applicant and has, therefore, contended that in the light of evidence as aforesaid and since there are two criminal cases pending against the applicant, registered with Wardha Police Station, application is prayed to be rejected.

4. In the light of submissions advanced as aforesaid, on perusal of report lodged by Sandesh Kamble it is revealed that incident took place on 2<sup>nd</sup> August, 2015 when he along with deceased were proceeding on two-wheeler at about 8.30 p.m. and when they reached near Gajanan Cycle Stores, co-accused Vikki Choube along with 3 – 4 associates were found present due to which deceased speedily proceeded ahead, however, they were intercepted by Vikki Choube and his men and after giving a slap blow to the complainant he went away from the spot and from some distance witnessed that those persons after making deceased fall on the ground assaulted by sharp weapons and ran away towards Gajanan Cycle Stores. Thereafter, complainant reached near Ajaysingh, however, he was lying unconscious having sustained bleeding injuries.

5. On considering the contents of report as aforesaid, there is absolutely no evidence of involvement of applicant nor his name appears in the report.

6. On perusal of charge-sheet it is stated that applicant's involvement is based on statements of witnesses Guddi Sawarkar and Rakhi Sawarkar, mother and sister of deceased, respectively, and witnesses Vishal Thul and Anup Nimbalkar and as per statements of these witnesses recorded under Section 164 of the Code of Criminal Procedure, it is stated that it is applicant who had conspired with co-accused to commit murder of deceased and it is further contended that involvement of applicant is also

established from the CDR which established fact of applicant being in constant touch with co-accused. In the background of involvement of applicant as alleged in the charge-sheet, statement of Guddi, mother of deceased, reveals that her son deceased Ajaysingh was habitual of inviting quarrel and for that reason he was residing separately from his family members. Her statement further reveals about strained relations between deceased and applicant due to some incident which occurred in the month of April, 2015. It further reveals that on 2<sup>nd</sup> of August, 2015 her daughter Rakhi informed that at 4.00 p.m. when Ajay had visited house he had apprehended assault upon him at the hands of applicant saying that applicant had conspired with contract killer to commit his murder.

7. It is material to note that both these statements are recorded on 6<sup>th</sup> August, 2015 after five days of the incident and only involvement of applicant from their statements could be of applicant's conspiring to commit murder of deceased or apprehension of deceased of assault upon him at the hands of applicant. So far as involvement of applicant as a conspirator based on above two statements is considered along with CDR on record, it is found that during the course of investigation Superintendent of Police, Wardha, obtained some information from the telephone Company with reference to Cell No.9637751510 which is informed to be in the name of one Premanand Patil while from other document one of the Cell Numbers of applicant is said to be 9637951510. It is therefore prima facie found that in fact the Investigating Agency had

obtained information with regard to some other cell phone and not that of applicant.

8. Learned counsel for the applicant made a statement at bar that the applicant had only one Cell phone and as such applicant is in no way concerned with Cell Phone No.9822235492. Even otherwise, the Investigating Agency does not appear to have obtained any information from the Cell phone Company with regard to this phone number.

9. In the background of above facts, on perusal of statements of Vishal as well as Anup Nimbalkar, it reveals that applicant had conspired along with co-accused Vikki and Akshya Tighare, Akshay Khadse, Nitin Orke to cause murder of Ajay. However, with regard to involvement as stated by them, except for material which is discussed herein above, nothing could be pointed out from the charge-sheet.

10. Having considering facts as aforesaid and the nature of evidence, no involvement of applicant can said to be established. With regard to pendency of two criminal cases against applicant, it is stated that in both the cases applicant is on bail.

11. In that view of the matter, application is liable to be allowed by imposing suitable conditions upon applicant, as per following order.

Applicant Girish Lakhanlal Agnihotri shall be released

on bail in Crime No.356 of 2015 registered at Wardha City Police Station, Distt.Wardha on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

Applicant shall not enter into territorial limits of City of Wardha during pendency of trial.

Applicant shall provide proof of his residence to the concerned Police Station within whose jurisdiction he preferred to stay and shall mark his presence with said Police Station once in three months on the first day of each such month, pending trial.

Needless to say that the applicant shall be allowed to enter Wardha city to attend the trial Court.

JUDGE

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