

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

CRIMINAL APPLICATION (BA) NO.52 OF 2017

Haripad s/o Harvilas Mandal and ors

..VS.

State of Maharashtra, through its Police Station Officer, Police Station Mulchera,
District Gadchiroli

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

Court's or Judge's Order

Shri R.R. Vyas, Counsel for the applicants.
Shri Nihil Joshi, Addll.P.P. for the non-applicant.

CORAM : P.N. DESHMUKH, J.
DATED : MARCH 1, 2017.

This application is filed by accused involved
in Crime No.13 of 2016 registered for the offences
punishable under Sections 392, 397, 341, and 34 of the
Indian Penal Code for bail.

Heard learned counsel for the applicants
and learned Additional Public Prosecutor.

It is submitted that admittedly from the
contents of report neither of applicants are identified by
complainant who are stated to be identified by one
Shailesh Mujumdar and in spite of that no statement of
Shailesh Mujumdar is immediately recorded nor test
identification parade is held during the course of
investigation to get applicants identified to be culprits
involved in this crime by complainant. It is, therefore,
contended that for want of identification of applicants,

they are entitled for bail on this count alone. It is also contended that though according to prosecution amount of Rs.750/- and one mobile phone is seized from applicant No.2 and Rs.1,000/- from applicant No.3, there is nothing to establish that above phone seized from applicant No.2 belongs to complainant. It is, therefore, submitted that since investigation is complete and charge-sheet is filed, applicants be released on bail as they are falsely involved by complainant who as per case of applicants at the material time was found indulged in performing some ritual along with his associates in crematorium and applicants on noticing them performing some unusual performance in the late hours in isolated area had objected upon which they learnt that such ritual was carried out for getting secret treasure. It is further case of applicants that when they informed complainant Pravir Bala they may file report against him as next stage would be to sacrifice the child, report came to be lodged against applicants by complainant falsely involving applicants in the present crime.

Learned Additional Public Prosecutor has opposed application as per its reply on record.

Perusal of report substantiates case of applicants as from its contents it is found that after complainant was intercepted by three persons, they are identified to be applicants by one Shailesh Mujumdar

since they were residents of same locality. Admittedly, no test identification parade is held with regard to complainant for which no explanation is found on record.

In that view of the matter and as it is found that recovery of one mobile phone is effected at the instance of applicant No.2, said mobile phone was not got identified from complainant, if it belongs to him. From the statements of other witnesses Ranjit and Subhash and on considering statement of Shailesh, same is found recorded on 24.9.2016. There is no explanation why statement of this witness came to be recorded after four days of the incident who in fact as per case of prosecution has identified accused persons involved in this crime. When all above aspects are considered together creates reasonable doubt in the case of prosecution, in the circumstances, application is liable to be allowed, as per order below:

Applicants shall be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- each with one surety each in the like amount.

While on bail, applicants shall mark their presence with Police Station Mulchera, District Gadchiroli on first day of alternate month, pending Trial.

The applicants shall submit proof of their residence with the investigating officer and shall update

the same in the event of change in future.

Criminal application stands disposed of
accordingly.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 3/3/2017