

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

CRIMINAL APPLICATION (APPW) NO.82 OF 2017
IN CRIMINAL WRIT PETITION NO. 70 OF 2016

(Shubham s/o Subhash Berisal and another vs. The State of Maharashtra)

AND

CRIMINAL APPLICATION NO.83 OF 2017
IN CRIMINAL WRIT PETITION NO.36 OF 2016

(Shahrukhkhan s/o Firozkhan Pathan and another vs. The State of Maharashtra)

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

Shri R.M. Daga, Advocate for applicants.

Shri K.R. Lule, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JUNE 13, 2017

Shri Daga, learned Counsel for applicants, seeks leave to not press Criminal Application No.83/2017 arising out of Criminal Writ Petition No.36/2016 for applicant no.1 Shahrukhkhan s/o Firozkhan Pathan at this stage with liberty to file a fresh application, if required.

Leave as prayed for is allowed, accordingly Criminal Application No.83/2017 insofar as it relates to applicant no.1 Shahrukhkhan s/o Firozkhan Pathan is disposed of as not pressed with liberty as prayed for.

Both these applications are filed for relaxation of condition, in particular condition no. (iv) imposed upon applicants by this Court while releasing them on bail under Section 167(2) of Code of Criminal Procedure by order dated 2/2/2016 passed in Criminal Writ Petition Nos. 36/2016 and 70/2016 respectively.

Heard Shri Daga, learned Counsel for applicants, and Shri Lule, learned Additional Public Prosecutor for respondent.

Shri Daga, learned Counsel for applicants, for the purpose of present applications has relied upon order dated 13/4/2017 passed by this Court in Criminal Application No.8/2017 arising out of order in Criminal Writ Petition No.70/2016 vide which condition imposed upon co-accused involved in the present crime was relaxed by this Court and has pointed out that other co-accused, who are similarly situated, have not been imposed similar restriction while being released on bail.

Considering the order relied as aforesaid, it is noted that same is passed on the principle of equality stating that the principle of equality works always in a positive way so as to remove the inequality or discrimination and not in a reverse way so as to introduce inequality and thereby relaxed the conditions. However, I find it necessary to consider these applications on their merits independently by taking into consideration role of applicants in the present crime, which required this Court to impose conditions upon them while granting bail. Accordingly, it is noted that condition is imposed upon applicants, not to enter Gondia District except for attending trial during the pendency of same finding that murder is caused in a dreaded manner. As such, it is found that considering the gravity of incident of assault on deceased, this Court finding that same is gruesome, has imposed such condition.

In that view of the matter, as on perusal of affidavit-in-reply filed by State, it is noted that role attributed to applicants is of conspirators claiming to be brain behind crime. Admittedly, neither of these applicants is stated to be assailant on deceased, who is stated to be shot by fire arms by co-accused Shahrulkhan s/o Firozkhan Pathan.

In view of facts as aforesaid and role attributed to applicants, who are arrayed as conspirators and further considering admitted fact of filing charge-sheet in the year 2015 itself and also considering the fact that charge-sheet was not filed within stipulated period, due to which applicants were released on bail by this Court, applications are liable to be allowed by relaxing condition imposed upon applicants, who are stated to be businessmen and of young age between 20 and 35 years by imposing suitable conditions as per order below :

Criminal Application No.82/2017 filed by Shubham s/o Subhash Berisal and Chhatarshal alias Banti s/o Mohan Banewar is allowed.

Criminal Application No.83/2017 insofar as applicant no.2 Yashudas s/o Sudhakar Harpal is concerned, is allowed.

Condition No.4 imposed upon applicants Shubham s/o Subhash Berisal and Chhatarshal alias Banti s/o Mohan Banewar in Criminal Application No.82/2017 and applicant no.2 Yashudas s/o Sudhakar Harpal in Criminal Application No.83/2017 stand relaxed.

Applicants Shubham s/o Subhash Berisal and

Chhatarshal alias Banti s/o Mohan Banewar in Criminal Application No.82/2017 and applicant no.2 Yashudas s/o Sudhakar Harpal in Criminal Application No.83/2017 are, however, directed to attend Gondia City Police Station once in a week initially for a period of three months, preferably on Sunday between 10 a.m. and 1 p.m. and thereafter on the first day of each month pending trial.

The criminal applications are disposed of in the above terms.

JUDGE

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