

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

CRIMINAL APPLICATION (ABA) NO.575 OF 2017

Mohsin s/o Shafiullah @ Kallu Khan

..VS..

State of Mah., Thr. PSO Ganeshpeth, Nagpur

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

Court's or Judge's Order

Shri P.P. Kotwal, Counsel for the applicant.
Shri T.A. Mirza, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.
DATED : SEPTEMBER 1, 2017.

Heard learned counsel Shri P.P. Kotwal for the applicant and learned Additional Public Prosecutor Shri T.A. Mirza for the State and perused the reply filed on behalf of the State so also the investigation papers those are made available for perusal of this Court.

The applicant is apprehending his arrest in connection with Crime No.131 of 2017 dated 29.5.2017 registered with Police Station Ganeshpeth, District Nagpur for the offences punishable under Sections 436, 427, 294, 323, and 506 read with Section 34 of the Indian Penal Code.

The first information report is lodged by Abdul Matin Wald Abdul Rehman son of Abdul Rehman.

The gist of the first information report is that on 29.5.2017, at about 3:00 p.m., accused No.1 Javed Khan Kallu

Khan approached to furniture shop by name Maharaja Furniture run by the first informant. He demanded a cooler from the first informant. According to the first information report, the said demand was persistently being made by Javed for last eight days. However, it was not fulfilled.

As per the first information report, Javed was demanding the cooler on credit. The said request was not accepted by the first informant. That time, Javed extended threats to the first informant by using abusive language. Thereafter, as per the first informant, Javed and his younger brother present applicant Mohsin came to the shop and, thereafter, 9 coolers were burnt by sprinkling petrol which was brought by Javed and also caused damage to the furniture shop.

According to prosecution, Javed was arrested and produced before learned Magistrate. He was sent by learned Magistrate to the police custody remand and recovery is also made. Subsequently, Javed is released on regular bail.

Learned Additional Public Prosecutor Shri T.A. Mirza for the State submits that in view of the statements made by the prosecution witnesses, they also attribute role against the present applicant.

Perusal of their statements shows overt act on the part of the applicant along with co-accused Javed. However, all those statements are recorded belatedly.

In view of recording of belated statements,

embellishment is not completely ruled out, especially when even according to the prosecution, initially it is only Javed who poured petrol and set the coolers afire. The role of the present applicant at initial stage was that he was accompanying Javed only. Had the present applicant also actively participated in the crime, such an important fact would not have been missed by the first informant or even Abdul Farook who only gave his statement on 2.8.2017.

This Court granted protection in favour of the applicant vide order dated 11.8.2017. While granting *interim* protection, the applicant was directed to attend Ganeshpeth Police Station, District Nagpur on 16.8.2017 and was directed to remain present with the investigating officer from 3:00 p.m. to 5:00 p.m..

According to learned counsel for the applicant, the applicant was present, in view of order passed by this Court, on the said day and was with the investigating officer and is already interrogated. This particular submission is not countered by learned Additional Public Prosecutor Shri T.A. Mirza for the State.

The reply shows that custodial presence of the present applicant is claimed for investigation purpose only.

In view of the fact that the applicant is already interrogated by the investigating officer and the seizure is also made at the best of the principal accused Javed, in my view,

custodial presence of the applicant is not at all warranted.

Consequently, I pass the following order:

ORDER

i) The criminal application is allowed.

ii) The applicant be released on bail in the event of arrest in connection with Crime No.131 of 2017 dated 29.5.2017 registered with Police Station Ganeshpeth, District Nagpur for the offences punishable under Sections 436, 427, 294, 323, and 506 read with Section 34 of the Indian Penal Code on he executing a P.R. Bond in the sum of Rs.5,000/- with one solvent surety.

iii) The applicant shall not cause any threat to any of the prosecution witnesses.

iv) With this, the criminal application is disposed of.

JUDGE

!! BRW !!