

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

CRIMINAL APPLICATION (BA) NO.810/2017

Avinash s/o Manoharrao Navarkhede ..vs.. State of Maharashtra through
PSO P.S. Hinganghat, Dist. Wardha.

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

Court's or Judge's orders.

Mr. C. B. Barve, Advocate for applicant.
Mr. T. A. Mirza, Advocate for non applicant-State.

CORAM : V.M. DESHPANDE, J.
DATED : AUGUST 31, 2017

Heard Mr. C.B. Barve, Advocate for applicant for quite some time. When this Court was not inclined to grant bail, the learned counsel submits that he has instructions to withdraw the present application. However, looking to the nature of accusation made against the present applicant and his tendency to repeat the offences which are in question, this Court is rejecting the prayer made by the learned counsel for the applicant.

The present applicant is arrested in connection with Crime No.534/2016 registered with Police Station, Hinganghat, Dist. Wardha for an offence punishable under Sections 143, 147, 148, 149 and 302 of the Indian Penal Code, Sections 3 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act.

The submission of the learned counsel for the applicant is that the charge-sheet is already filed in the matter. Therefore, further custodial presence of the

applicant is not necessary. It is further submitted that there is material inconsistency in between the statements of the first informant Sudarshan and the person accompanying with him by name Gulshan as to whether Sudarshan was attacked first or Gulshan was attacked first. The learned counsel for the applicant submitted that when as per the first informant, the applicant was having deadly weapon then there was no occasion for the co-accused to give iron rod blow on Sudarshan and this fact shows that the present applicant is falsely implicated in the crime. It is further submitted that there is no recovery of the pistol from the applicant. He further submitted that there is delay of about 4 ½ hours in lodging the FIR. He therefore submitted that applicant be released on bail.

The learned A.P.P. has filed detailed reply, which is taken on record.

Insofar as the contention of the present applicant that the charge-sheet is filed therefore applicant is entitled to be released on bail, is required to be rejected. Merely because the charge-sheet is filed that itself does not give any right for the present applicant to be released on bail. The Courts are duty-bound to examine the seriousness of the accusations made in the FIR and other material in the charge-sheet. Further, on perusal of the charge-sheet if it is noticed that the accusation against the present applicant are very serious, merely because the charge-sheet is filed on record that is

not sufficient for the applicant to claim bail. Hence this contention is rejected.

Another contention of the applicant is that there is delay in lodging of the FIR. According to the learned counsel, the delay is of 4 ½ hours. It is always open for the prosecution to explain the delay by adducing necessary evidence during the trial. However in the present matter, looking to the seriousness of the offence, I am of the opinion that even the delay of 4 ½ hours is not fatal to the prosecution. Hence, the submission about the delay is worth rejection and it is accordingly rejected.

Another contention is that there is an inconsistency in between the FIR, statement given by Sudarshan and his companion Gulshan in respect of the sequence of attack. According to the FIR, it is the first informant who was attacked firstly by the person who was wearing saffron colour shirt whereas as pointed out by the learned counsel for the applicant, Gulshan claims that he was attacked first and thereafter Sudarshan was attacked.

In my view, this discrepancy is very minor in nature. That does not go to the root of the prosecution case. Whether Sudarshan was attacked first or Gulshan was attacked first does not make any difference. Therefore this submission of the learned counsel for the applicant needs to be rejected.

According to the learned counsel for the applicant, there is no evidence against the present applicant. The said submission, in my view, is contrary to the record inasmuch as Sudarshan and Gulshan specifically states in their statements that after Sudarshan was attacked by iron rod and when he tried to save his life by escaping from the clutches of the attackers and when he was running away that time the present applicant, whose name is specifically given in the FIR, has chased the first informant and opened fire by holding pistol in his hand. Therefore, the specific role is attributed against the present applicant. Hence the contention made on behalf of the learned counsel for the applicant that there is no material showing involvement of the present applicant is totally contrary to the facts and is devoid of substance. Same is therefore rejected.

It is further submitted that there are no injuries of firearm therefore, according to him, section 307 of the IPC cannot be made applicable. This is a very strange submission. For an offence punishable under Section 307 of the IPC, injury is not *sine qua non*. When there is an evidence that the it is the applicant who has opened fire twice and only with the grace of God the injured could survive, this itself is sufficient.

Lastly, it is submitted that the weapon is not recovered at the instance of the present applicant. In that behalf, learned A.P.P. for the State pointed out that after committing offence in question, the attacker ran

away and they were found at Sakkardara square at Rashtramata Indira Gandhi Sabhagruha and when the police party tried to accost the present applicant, that time the present applicant opened fire from the pistol towards the police party. However, police party overpowered him and was taken into custody and the pistol was recovered. According to the learned counsel, the applicant is released on bail in the said offence.

Merely because the applicant is released in the said offence that by itself does not give any right in favour of the applicant for getting himself released on bail. The attitude of the present applicant shows that he does not have any fear of law inasmuch as he is ready even to open fire to police party. Further, according to the learned A.P.P. the pistol which was seized is already sent to the chemical analyzer and the report is also positive.

All these circumstances show that the applicant is not entitled to be released on bail since if the applicant is released on bail then possibility of he again indulging into such type of crime cannot be ruled out especially when he has even courage to open fire against police.

In that view of the matter, there is no merit in present application. The same is therefore rejected.

JUDGE