

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

CRIMINAL APPLICATION (BA) NO.869 OF 2016
(Parmeshwar s/o Vishnu Rathod vs. 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 applicant.

Shri C.A. Lokhande, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 16, 2017

Heard Shri Daga, learned Counsel for
applicant, and Shri Lokhande, learned Additional Public
Prosecutor for respondent.

This application is filed for bail in Crime
No.153/2014 registered for the offences punishable
under Sections 395 and 397 of Indian Penal Code.

Shri Daga, learned Counsel for applicant,
submits that investigation is complete and charge-sheet
is filed in the present crime. By inviting my attention to
the documents filed along with charge-sheet, it is
demonstrated how applicant is not involved in the crime
and for that purpose, learned Counsel has taken me to
the contents of the report and on reading material
portion thereof, has submitted that while complainant
was proceeding back from Chikhali on collecting cash of
State Bank of India, amounting to Rs.30 lakhs, to his
Branch of said Bank at village Sakharkherda, present
incident took place. It is submitted that in the report,

complainant has stated that while they were proceeding towards Chikhali, their vehicle was intercepted by one Max Mahendra pick up van wherein 5-6 persons, aged about 25-30 years, were present, out of which two persons committed assault on complainant while others were shouting at the spot. It is, however, submitted that neither in the report nor in the memorandum of test identification parade, any role is attributed to applicant with reference to offence of dacoity in respect of amount involved in the present crime.

It is the case of applicant that he is agriculturist and as such, alleged recovery of amount of Rs.50,000/- from him is of no consequence, more particularly when there is no investigation with reference to identification of amount of Rs.50,000/- alleged to be recovered from applicant, who is, even otherwise, stated to be visually impaired with his right eye. It is, therefore, contended that since investigation is complete, application be allowed as applicant is behind bar since more than two years.

Shri Lokhande, learned Additional Public Prosecutor for respondent, has opposed the application as per reply on record and has contended that there is possibility of trial being commenced in the near future. It is contended that there is direct evidence against applicant in the present crime, who is identified by complainant and, therefore, application be rejected.

From the report, it is revealed that incident took place on 26/12/2014 at 2.30 p.m. Report is lodged by complainant, who was working as a Cashier

with State Bank of India, Sakharkherda Branch and on that day, at 10.30 a.m. proceeded from Sakharkherda to State Bank of India at Chikhali to bring cash along with Nandkishor Jadhav, employee of complainant's Bank. They proceeded by taxi driven by Madhukar Lokhande along with armed Guard Pralhad Shinde. From the report, it is further revealed that on getting cash of Rs.30 lakhs, while all these four persons were returning back to Sakharkherda, on the way, they were overtaken by one vehicle Max Mahendra having no registration number plate displayed on it. The said vehicle intercepted complainant's vehicle and 5-6 persons, aged about 25-30 years, who were occupying the said vehicle, came near their vehicle and broke open the glass of vehicle from Driver's side. As per report, two of them committed assault on complainant and others were raising shouts. Complainant has specifically stated that he can identify said two persons, aged about 25-30 years, who were having dark complexion.

From the test identification parade memorandum, applicant is found identified by complainant. However, it is material to note that there is no mention that he is the same person, who had lifted the cash box from the vehicle of complainant. It is material to note that though according to the case of prosecution, complainant, Bank employee Nandkishor Jadhav, armed Guard Pralhad Shinde and Driver Madhukar Lokhande were all travelling together, neither of the other three persons had identified any suspect. Identification of applicant as aforesaid does not establish

his involvement so far as offences under Sections 395 and 397 of Indian Penal Code, which are registered, are concerned.

Even on considering the case of prosecution about recovery of Rs.50,000/- at the instance of applicant, having considered the fact that applicant is an agriculturist, this by itself would not be sufficient to reject the application in the absence of any substantive evidence against him, more particularly when admittedly prosecution has not carried out any investigation with reference to identification of seized amount of Rs.50,000/-. No explanation is put forth for non-identification of said amount. In fact, when it is the case of prosecution that complainant was carrying cash of Rs.30 lakhs from State Bank of India, Chikhali Branch, identification of said currency notes could have been easily done by complainant as well as Arvind Gavai working as Cash Officer with State Bank of India, Chikhali Branch, who had supplied cash to complainant on the date of incident.

Having considered the aforesaid facts and from the certificate tendered at bar, it is noted that applicant is a visually impaired person having no perception of light in his right eye, application is liable to be allowed by imposing suitable conditions upon applicant :

The applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- with one surety in like amount. While on bail, applicant shall mark his presence with Sakharkherda Police Station on

first day of each month pending trial. Applicant shall not temper with evidence. Applicant shall provide proof of his residential address to Police Station, Sakharkherda and shall update the same in the event of any change therein. The criminal application is accordingly allowed.

JUDGE

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