

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

CRIMINAL APPLICATION (BA) NO.948 OF 2016

Damaji Gulab Maraskohle

..VS..

The State of Maharashtra, through Police Station Officer Parseoni, District Nagpur

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

Court's or Judge's Order

Shri Suresh Raut, Counsel for the applicant.
Shri S.D. Sirpurkar, Addll.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.
DATED : JANUARY 9, 2017.

The accused, involved in Crime No.105 of 2014 registered by Police Station Parseoni, District Nagpur for the offences punishable under Sections 307 and 34 of the Indian Penal Code read with Section 3/25 of the Arms Act has, filed this application for bail.

Heard learned counsel Shri Suresh Raut for the applicant and learned Additional Public Prosecutor Shri S.D. Sirpurkar for the non-applicant/State.

Learned counsel Shri Raut for the applicant submits that from the report lodged by one forest labour, no involvement of the applicant is established as according to its contents, fire was shot from a country made weapon upon one forest officer named Satish

Shendre and has specifically stated that a person who has shot a fire was wearing half T-shirt and loongi. The complainant has not stated any physical description of the assailant. Learned counsel for the applicant, then by referring to statement of injured Satish recorded after three days of the incident, has pointed out that as per his say the person who has fired was wearing white shirt and cement coloured full pant who was about five and half feet tall and of fair complexion. It is, therefore, contended that having discrepancies, which are material and goes to the roots of the case to establish identity of the assailant, no case can be said to be made out by the prosecution to establish involvement of the applicant as assailant of Satish.

It is further contended that according to the arrest memo, which is dated 4.9.2015, the applicant is stated to be of whitish in colour. In that view of the matter, it is submitted that no case is made out and thus the applicant be released on bail as charge-sheet is filed.

Learned Additional Public Prosecutor Shri S.D. Sirpurkar for the State opposes the application on the line of reply on record and has contended that the applicant is involved in serious offence as he is involved in poaching cases and is the resident of out of Maharashtra. It is contended that act of the applicant committing assault by fire upon a forest officer is a

serious offence as even otherwise as per seizure panchanama, one country made gun is seized at the instance of the applicant. It is, therefore prayed that the application be rejected.

Perusal of the documents filed with the application reveals that report came to be lodged by one Bhagwat Ivrate, forest labour with reference to incident which took place in jungle at around 8:00 a.m. on 14.10.2014 while he along with Satish Shendre, injured were patrolling and found one person wearing in loongi and half T-shirt roaming in jungle. Suspecting him, complainant as well as Satish and one Manish, forest labour kept watch upon him. Suddenly, the complainant noted that there was a fire and found Satish having bleeding injury to his shoulder. In the meantime, Manish arrived near Satish. From the report it is revealed that as per injured Satish there was one more person who has fired and was wearing blue coloured banian and loongi. Thus, from the report it is revealed that at the time of incident there are two suspects. Admittedly, complainant has not seen any of them firing on Satish while he on hearing noise of gun of one fire, found that Satish had sustained injury on his shoulder. From the report it is further found that it is injured Satish who informed complainant that second person who was present at the spot had fired and one

was wearing blue coloured banian and loongi.

In the background of contents of the report and perusal of statement of Satish, which is recorded after three days of the incident, though corroborate with the contents of report about presence of two suspects in the forest, he in the specific terms had stated that person who has opened the fire was wearing white coloured shirt and cement coloured pant due to which he sustained injury. The complainant has also given physical description of assailant to be a fair complexion having five and half feet tall aged about 42 to 45 years. In spite of this, admittedly, no identification parade is held during the course of the investigation.

Similarly, on perusal of arrest form of the applicant he is shown of whitish complexion about five and half feet tall.

Having considered the contents of report as well as statement of injured as aforesaid, thus there is nothing to establish as applicant is the only person who has opened fire upon injured, more particularly when it is no case of the prosecution that there was only one person in the forest when the incident took place.

In that view of the matter, though from the discharge summary it is noted that injured has sustained fracture of first and second left side ribs with injury to trunk and recovery of gun is effected from the

house of the applicant at his instance, this by itself is not sufficient to establish involvement of the applicant in the present crime.

In that view of the matter, the application is allowed by imposing suitable conditions as per order below:

ORDER

1. The applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one local surety in the like amount.
2. The applicant while on bail shall mark his presence with Police Station Parseoni, District Nagpur of first day of each such month, pending trial.
3. The applicant shall submit proof of his residence with the investigating officer and shall update the same in the event of change in future.

The criminal application is disposed of as such.

JUDGE

!! BRW !!

.....6/-

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 :- 10/1/2017

...../-