

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

CRIMINAL APPLICATION(ABA) NO. 736 OF 2017

(ASHOK KASHINATH WALKE....VS.. STATE OF MAH. THR. PSO PS CHIKHALI, DIST. BULDANA)

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

Court's or Judge's orders

Shri T.S.Deshpande, Advocate for Applicant.
Ms Kalyani Deshpande, A.P.P. for Non-applicant.

CORAM : Z.A.HAQ, J.

DATED : NOVEMBER 24, 2017.

Criminal Application (ABA) No. 739 of 2016 filed by the applicant earlier seeking pre-arrest bail, apprehending arrest in connection with Crime No.496/2016 was dismissed by order dated 22nd June, 2017. In the order dated 22nd June, 2017 it is recorded that 6 applications filed on behalf of the accused in that crime were placed before the Court and it was observed that the revenue officers and owners of the agricultural land had been in collusion and even the Investigating Officer had not conducted the investigation properly and seriously. It was observed that the main accused Sheikh Riyaz, who was working as Talathi at the relevant time, was not arrested even after rejection of the application filed by him under Section 438 of the Code of Criminal Procedure. It was submitted at the time of hearing by the advocate representing one of the accused that Sheikh Riyaz was moving freely in the town. In the order dated 22nd June, 2017 it is recorded that only after this Court took serious note, the investigating officer came out with a submission that Sheikh Riyaz had surrendered.

2. The order passed by this Court on 22nd June, 2017 was challenged in Petition for Special Leave to Appeal (Criminal) No. 5349 of 2017 which came to be disposed as withdrawn by order dated 28th July, 2017.

3. Now, the applicant has moved the present application seeking pre-arrest bail. The Police Station Officer, Police Station, Chikhali has filed an affidavit sworn on 13th October, 2017 stating that the investigation is in progress and if the applicant is released on pre-arrest bail it may hamper the investigation.

4. At the time of hearing, the learned advocate for the applicant pointed out the averments in paragraph 13 of the application that during the pendency of the application before the Sessions Court, the applicant had co-operated with the investigating agency and had attended the Police Station on 4th August, 2017, 5th August, 2017, 6th August, 2017 and 7th August, 2017.

5. As nothing is placed on record to show that the interim protection was granted to the applicant, the learned A.P.P. was asked to file additional affidavit of the Investigating Officer to clarify as to why the applicant was not arrested. The additional reply sworn by Police Inspector, Chikhali Police Station on 23rd November, 2017 is filed stating that the applicant had filed application praying for pre-arrest bail before the Sessions Judge, Buldana on 29th July, 2017, the application was listed before the incharge Sessions Judge, Buldana on 4th August, 2017 on which date the Investigating Officer was personally present in the Court and the learned incharge Sessions Judge had orally directed the Investigating

Officer that the applicant should not be arrested for three days and the applicant was directed to attend the Police Station/ Investigating Officer on those three days. This is how the Investigating Officer has explained why the applicant was not arrested though there was no order granting protection to the applicant.

6. After the additional reply came to be filed and the matter was called out on 23rd November, 2017 the learned advocate for the applicant sought permission to withdraw the application stating that the applicant would surrender. I refused permission as sought by the applicant for withdrawal of the application and adjourned the matter for today.

7. Today, the learned advocate for the applicant and the learned A.P.P. have submitted that the applicant has surrendered yesterday in the evening.

In view of the fact that the applicant has surrendered, the present application does not survive and it is **disposed** accordingly.

8. However, the facts recorded above create an impression that the Investigating Agency has failed to take appropriate action in the matter and a situation was sought to be created to enable the applicant to seek pre-arrest bail from this Court. The submission made in the additional reply filed on behalf of the non-applicant on 23rd November, 2017 that the learned incharge Sessions Judge had orally directed that the accused should not be arrested for three days also cannot be accepted. In the matters of the present type, it is not expected that the accused can be permitted to roam freely

without there being any order granting protection to the accused.

9. In Criminal Application (ABA) No. 722/2016 filed by co-accused Vishwajeet Janardhanappa Bondre and another an order was passed on 22nd June, 2017, relevant portion of which is as follows:

“The facts which have unfolded show that the Investigating Agency is not serious in conducting the investigation in the matter. Some of the accused are Government Servants holding important posts in the Revenue Department. Considering all these aspects, the Superintendent of Police, Buldana is directed to examine the matter, also whether the present Investigating Officer should be removed from the investigation of this case and whether another Investigating Officer should be appointed.

Though presently, it appears that the investigation is in respect of about fourteen cases in which orders of conversion of agricultural land into non-agricultural land is being investigated, from the submission made at the time of hearing, it appears that, the number of such fraud cases may increase by almost 20 times. Considering all these aspects, it would be proper that the Superintendent of Police supervises the investigation.

The Superintendent of Police may also cause discreet inquiry against the Investigating Agency and take further appropriate steps in the matter.

The action taken report shall be placed on record of this application within 04 weeks.”

The learned A.P.P. has submitted that after discreet inquiry was conducted by the Superintendent of Police, the Investigating Officer was changed.

10. The facts which have come on record of the present application create a *prima-facie* impression that the Investigating Agency is not serious about conducting the investigation and a mockery is being made of the criminal justice delivery system.

11. Copy of this order be served on the Superintendent of Police, Buldana, Commissioner of Police, Amravati Division, the Sessions Judge, Buldana and the in-charge Sessions Judge, Buldana who dealt with Criminal Application No.301 of 2017 which was filed by the applicant under Section 438 of the Code of Criminal Procedure.

12. The learned A.P.P. shall file an affidavit within four weeks pointing out that the copies of this order have been served on the concerned.

JUDGE

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