

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

CRIMINAL APPLICATION (ABA) NO.881/2017

Bacholi s/o Sihambar Batho

..vs..

State of Mah., thr. PSO Ramnagar, Tahsil and District Chandrapur

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

Court's or Judge's Order

Shri Mahesh Rai, Counsel for the applicant.

Shri V.A. Thakare, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 22, 2017.

1. As per order dated 20.12.2017, Superintendent of Police at Chandrapur Smt. Niyati Thakkar is personally present. She has stated that she has personally looked into the matter when it is noticed by her that there are lapses on the part of the Police Department for not giving proper and prompt instructions to the Office of the Public Prosecutor. She is taking action against the erring officers and states that in future such will not happen.

2. On the assurance given by the Senior Police Officer, this Court is satisfied and hopes that in future the Court will not be required to ask the Senior Police Officer to again attend the Court and her presence is discharged.

3. This is an application for anticipatory bail since the applicant is apprehending his arrest in connection with Crime No.1492 of 2017 registered with Police Station Officer Ramnagar, Chandrapur, District Chandrapur for the offences punishable under Sections 65(e) and 83 of the Maharashtra Prohibition Act, 1949 and under Section 188 of the Indian Penal Code.

4. Heard learned counsel Shri Mahesh Rai for the applicant and learned Additional Public Prosecutor Shri V.A. Thakare for the State. Also, perused the reply filed on behalf of the State.

5. According to the prosecution and the reply, when the police staff was patrolling at Ramnagar area, they received a secret information that one Ramesh Pal is selling liquor in front of his "Hotel Ranjeet" on his Two-Wheeler Activa bearing registration No.MH-34/Y/7426. Accordingly, the police party reached to the said spot and they found 115 bottles of 90 ML. Country Liquor and 108 bottles of Indian Made Foreign Liquor in the Activa.

6. The police party seized the property amounting to Rs.63,500/-. According to the prosecution, during inquiry, it came to their knowledge that the present applicant is involved in the commission of the offence.

7. Though it is stated in the reply that the applicant is actively involved in the commission of the offence, the reply is

totally silent as to what is the active involvement of the applicant in the commission of the offence.

8. Learned counsel Shri Mahesh Rai for the applicant submits that in fact the applicant was arrested in Crime No.1300 of 2016 registered with Ramnagar Police Station, District Chandrapur for the offences punishable under Sections 376(2)(F)(I)(J), 506-I, 4, and 5 of the The Protection of Children from Sexual Offences Act (POCSO Act) 2012. He submits that in the said offence the applicant was released on bail on 19.6.2017 with a condition that the applicant shall not enter within the territorial jurisdiction of the Chandrapur district.

9. The offence and the first information report, in question, are dated 27.10.2017. Thus, on this particular day, the present applicant was prohibited by the order, under which the applicant was released on bail in the previous offence, to enter within the territorial jurisdiction of the Chandrapur. In spite of the fact that he was prohibited from entering into the territorial jurisdiction of the Chandrapur district on 27.10.2017, he has committed the offence. Till today, for the reasons best known to the prosecution and the investigating officer, the application is not filed for cancellation of the bail in the earlier offence committed by the applicant.

10. Learned counsel Shri Mahesh Rai for the applicant has invited my attention to page Nos.23 and 24 of the compilation which show that it is order passed by this Court

(Coram : Z.A. Haq, J.) dated 10.11.2017 in Criminal Application No.1772 of 2017 by which this Court on the said date relaxed the condition imposed upon the applicant not to enter within the territorial jurisdiction of the Chandrapur district. The order shows that the condition was relaxed after hearing learned Additional Public Prosecutor for the State. If on 27.10.2016 the applicant entered territorial jurisdiction of the Chandrapur district, said fact ought to have been pointed out to this Court by the investigating officer. However, for the reasons best known to him, he has failed to point out the said fact to this Court. Consequently, on 10.11.2017 this Court has relaxed the condition.

11. Even, as on today, the application for cancellation of the bail is not filed. This goes to the root of the matter and it substantiates the claim of the applicant that he is unnecessarily implicated in the crime at least *prima facie*.

12. Learned Additional Public Prosecutor tries to point out that the applicant is having criminal past record.

13. No doubt, the applicant is having criminal past record. However, he is released on bail by the competent Court and at no point of time it is the prosecution case that when he was on bail, he has breached any of the conditions warranting cancellation of the bail.

14. In that view of the matter, the applicant has made out a case for his protection. Consequently, I pass the

following order:

ORDER

(i) The criminal application is allowed.

(ii) Applicant Bacholi s/o Sihambar Batho, in the event of his arrest, the applicant be released on bail on he executing a P.R. Bond in the sum of Rs.25,000/- with two solvent sureties of the like amount, in connection with Crime No.1492 of 2017 registered with Police Station Officer Ramnagar, Chandrapur, District Chandrapur for the offences punishable under Sections 65(e) and 83 of the Maharashtra Prohibition Act, 1949 and under Section 188 of the Indian Penal Code.

(iii) The applicant shall attend the police station on 27.12.2017 and 28.12.2017 and shall be with the investigating officer from 3:00 p.m. to 5:00 p.m..

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

JUDGE

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