

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2010 OF 2018

Ghanshyam Pawankumar Chaudhari ... Applicant

Vs.

State of Maharashtra ... Respondent

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Mr. Rizwan Merchant a/w Mr. Akshay Bafna I/by Samrudhi Salvi
for the applicant.

Mr. Arfan Sait, APP for the Respondent-State.

Mr. Ravindra R. Daundkar, Sr. Inspector, AHTC, Crime Branch,
Thane is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th SEPTEMBER, 2018.

P.C.

1. The applicant is seeking bail in connection with C.R. No. 1-18 of 2018 registered with Kopri Police Station. The applicant was arrested on 24th June, 2018. The investigation is completed and the chargesheet has been filed.

2. The FIR was registered for offence punishable under Section 109, 114, 212, 407, 411, 420, 467, 468, 471, 120(b) of Indian Penal Code read with Sections 3, 7, 8 and 10 of the Essential Commodities Act, 1955 read with provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and

Prevention of Malpractices) Order 2005.

3. The prosecution case is that on 1st March, 2018 the secret information was received by the police that driver of Tanker bearing No. MH-04 GR 2073 would proceed to Indore via Agra Highway after checking at Anand Check Naka, with said tanker loaded with diesel filled up at Nhavasheva from Reliance Company without off loading the diesel at Mumbai Godi bunkers on instructions from the owner of tanker and the contractor by using false bill / invoice of sludge oil issued in the name of bogus party. On receipt of the said information, the complainant and other police personnel alongwith panchas waited at Anand Check Naka and at about 23.40 hours, the police intercepted the driver of the tanker (accused No.1). The inquiries were made with the driver. He informed that he is on the way to Indore and the tanker is carrying sludge oil. However, with thorough enquiry he disclosed that the tanker is containing 24000 liters diesel to be delivered to Petrol Pump on instructions of owner of tanker and contractor. On verification, it was noticed that the tanker was carrying diesel. He also disclosed that he is transporting diesel to Indore Madhya Pradesh on the basis of bogus bill/invoice. On further interrogation, of driver Shakir Ali, he disclosed that, he is working

with Safar Transport Company. The owner Mr. Nabiraja Khan had instructed him to load the diesel from Reliance Company at Nhavasheva. Hence, the tanker was filled up with 24,000 litres of diesel after obtaining challan for its delivery to Mumbai Godi. Three other tankers of Safar Transport were also sent for loading diesel at Nhavasheva. He further disclosed that, he was asked to handover challan to Mehta. He handed over challan / invoice to Mehta and in exchange he was given false Invoice to deliver sludge oil to Richita Trading Pvt. Ltd., Indore, Madhya Pradesh. Hence, he was proceeding to said destination. In pursuant to that, FIR was registered on 2nd March, 2018. During the course of investigation, it was found that another tanker driver of the tanker bearing No. MH04 EL 4534 (accused No.5) acting at the instance of Nabiraja (accused No.2) after loading 18000 liters of high speed diesel from Reliance Tank, instead of delivering it at Mumbai dock sold diesel on the basis of bogus document through accused No.3 Jairaj @ Guddu Sachan to B.L. Goyal Infrastructure Pvt. Ltd., at Pamakhedi Village, Khandva, Indore, Madhya Pradesh. When the investigating team visited the said place, they found said diesel tanker was emptied in the underground tank and therefore they seized 11275 litres of diesel from underground stored illegally, in

the presence of District Supply Officer, Food and Civil Supplies Department and others. It was revealed that all arrested accused and wanted accused were in collusion with each other. Accused Shakir Ali, Nabiraja Khan, Jayaraj @ Guddu Sachan, Shafiq Khan and Sadanand Yadav were arrested on 2nd March, 2018, 3rd March, 2018, 7th March, 2018, 14th March, 2018 and 4th June, 2018 respectively. Accused No.6 Manoj Koli and accused No.7 Ghanshyam Choudhari (applicant) were arrested on 24th June, 2018.

4. The applicant was apprehended on the basis of allegations that he has provided assistance to the co-accused Manoj Koli to evade arrest. From the documents, the remand application and the reports filed by the police time and again it appears that the applicant has alleged to have provided financial and logistic support to accused Manoj Koli. It is alleged that he had visited places alongwith Manoj Koli.

5. Application for bail preferred by the applicant before the Sessions Court, which was rejected on 25th July, 2018.

6. Learned counsel for the applicant submitted that taking the prosecution case as it is that the applicant can be attributed the charge under Section 212 of Indian Penal Code. The allegation

against the applicant is that he has helped and provided assistance to Manoj Koli. It is further submitted that there is no other evidence to substantiate his involvement in aiding and abetting other accused in commission of crime. It is submitted from the remand applications and the statements recorded by police, it is apparent that the prosecution case has proceeded with the fact that the applicant had allegedly committed act of harbouring offender. He accompanied accused Manoj Koli at various places. The applicant was produced alongwith co-accused Manoj Koli for remand before Chief Judicial Magistrate on 24th June, 2018. He was charged with Section 212 of Indian Penal Code and thereafter Section 109 and 114 of Indian Penal Code with added without any evidence. The respondents were aware that Section 212 of Indian Penal Code is bailable and in order to implicate the applicant, charges under Sections 109 and 114 of Indian Penal Code were added. It is submitted that he is implicated being employee of Shahi Shipping Limited. He is working in company since last 16 years. Nothing is to be recovered from him. Investigation is completed and chargesheet is filed against him.

7. Learned advocate for the applicant further submitted that on perusal of the complainant, the statement of witnesses Rohington

Patel, Aparna Amre and other witnesses does not indicate that applicant is involved in the commission of crime in any manner or he has abetted co-accused in commission of crime. He is in custody from the date of arrest. There are no criminal antecedents against him. Investigation is completed and the chargesheet has been filed.

8. Learned APP submitted that Section 109 of IPC has been invoked right from inception which is apparent from remand application. It is submitted that movement of the applicant with the co-accused at various places indicates his involvement in the crime. It is further submitted that while filing chargesheet, the prosecution has made out the case under Section 109 of Indian Penal Code against the applicant. Applicant is well acquainted with other accused. The involvement of the applicant by providing support like arranging tickets and accompanying him at various places, having meeting with the main accused shows his involvement in the crime. Thus, the prosecution case against the accused that he had harboured aided and abetted other accused for committing crimes. Learned APP submitted that the visiting card was found from his possession which shows he is Director of SKS Logistic. It is submitted that applicants role cannot be

segregated. The applicant took accused No.6 to different location on instructions from main accused to avoid legal action by police and to create hurdle in the investigation of the case. The co-accused was taken to different States and provided shelter for four months. The applicant is from another State and is likely to abscond, if bail is granted. The main accused are yet to be arrested. The applicant is involved in serious crime.

9. Having perused the documents on record. It is apparent that the applicant has allegedly provided assistance to co-accused Manoj Koli by providing finance and or shelter to evade arrest. The allegations would constitute offence of harbouring offender provided under section 212 of Indian Penal Code. The applicant has allegedly travelled to Goa, Jamnagar, Dwarka, Somnath, Tirupati, Haridwar, Delhi, Mathura, Orissa, Kolkata, Bihar and other places with accused Manoj Koli. The applicant has not participated in alleged delivery of diesel to Ron Tapmeyer. The transactions had taken place at Nhavasheva. The tanker is intercepted at Thane. The statement of Manjiri Naik and Janardan Patil who are staff of Shahi Shipping at Goa refer to applicant accompanying accused Manoj Koli to Goa for providing accommodation to him. The evidence on record does not indicate

that prima-facie that the applicant was conspirator in the said crime. That the applicant is in custody from 24th June, 2018. The accused Manoj Koli is also in custody. Chargesheet is filed and further custody is not required. The remand application dated 24th June, 2018 indicate the arrest of applicant with Manoj Koli. The case of prosecution in the remand application is that the applicant had provided asylum to accused Manoj Koli. The applicant was remanded to police custody till 28th June, 2018. He was again produced for remand on 28th June, 2018. In the said application also the case against applicant is providing shelter to Manoj Koli. On 8th July, 2018 the applicant and co-accused were produced before Court and judicial custody was sought. The Court had remanded them to MCR till 19th July, 2018.

10. Taking into consideration the factual aspects as stated above, and considering that chargesheet is filed, further detention of the applicant is not necessary. Hence, bail can be granted to the applicant.

ORDER

- i) Criminal Bail Application No. 2010 of 2018 is allowed;
- ii) The applicant is directed to be released on bail in C.R. No. 1-18 of 2018 registered with Kopri Police Station on furnishing P.R.

Bond of Rs.25,000/- with one or more local sureties in the like amount;

iii) The applicant is permitted to furnish cash security of Rs.25,000/- for a period of four weeks;

iv) The applicant shall report A.H.T.C. Thane, once in a month on first Saturday between 10 a.m. to 12 noon till further order;

v) The applicant shall attend court proceedings on the date of hearing unless exempted by the trial Court;

vi) The trial Court shall not be influenced by the observation made in this order during trial.

vii) Application stands disposed off.

Sachidanand
Kuttan Nair
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by Sachidanand
Kuttan Nair
Date:
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(PRAKASH D. NAIK, J.)