

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

CRIMINAL APPLICATION (BA) NO.31/2018

Arjun s/o Omprakash Yadav ..vs.. State of Maharashtra through PSO P.S.
Dhantoli, Nagpur.

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

Court's or Judge's orders.

Mr. Sunil Manohar, Senior Advocate with Mr. A. A. Naik,
Advocate for the applicant.
Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 22, 2018

1. Heard Mr. Sunil Manohar, Senior Advocate for applicant and Mr. Thakare, A.P.P. for non applicant-State.

2. The present application is under Section 439 of the Code of Criminal Procedure for enlarging the applicant on bail. The applicant is arrested in connection with Crime No.226/2017 registered with Police Station, Dhantoli, Nagpur for an offence punishable under Sections 141, 143, 147, 148, 149, 323, 324, 325, 452 and 307 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 135 of the Bombay Police Act.

3. Bursting of fire crackers by children on public road has resulted into lodging of two different first information reports with Police Station, Dhantoli. Lodging of two different FIRs about one and the same incident clearly

shows and establishes that there was a group clash between the two groups.

4. First in time is FIR bearing No.335/2017 which is registered as Crime No.226/2017. It is lodged on 22.10.2017 at about 5.24 Hrs. This FIR is by Avdhesh alias Papa Yadav. Name of the present applicant figures in the said FIR along with other co-accused persons.

5. Another FIR is FIR No.336/2017 which is registered as Crime No.227/2017 and the said is registered on the basis of report lodged by Smt. Lakshmi Yadav. The said is also registered for an offence punishable under Sections 141, 143, 147, 148, 149, 323, 324, 506 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 135 of the Bombay Police Act. It is reported to this Court that later on an offence under Section 307 of the Indian Penal Code was also added.

6. In Crime No.227/2017, the first informant in Crime No.226/2017 is shown as an accused along with other co-accused persons.

7. The gist of both the cross-reports is that on the day of '*Bhaubeej*', crackers were burst, which engulfed initially into verbal and subsequently physical assault on each other. Both the reports show that there is a long standing political rivalry between these two families.

8. As per the submissions on behalf of the learned Senior Counsel, the applicant was arrested on 30.12.2017 and he was in Police Custody Remand till 03.01.2018 and thereafter, the present applicant was sent to Magisterial Custody Remand and since then he is languishing in Central Jail. It is further the submission of the learned Senior Counsel that the present applicant is aged about 19 years and is pursuing his education in B.B.A. and is a bona fide student of a private college viz. City Premier College, Nagpur. He thereafter submitted that the order remanding the applicant in Magisterial Custody was never questioned by the investigating officer. That shows that the investigation vis-a-vis the present applicant is already over. He further submitted that even during the time when the applicant was in police custody remand, no weapon alleged to be used in the crime was recovered at his behest. He submitted that only his clothes were seized. He therefore submitted that the applicant be released on bail.

9. Per contra, Mr. Thakare, the learned A.P.P. submitted that the offence is very serious one. Two groups fought with each other resulting into injuries to six persons. Out of that, two persons by name Avdhesh, the first informant and Mangal, received grievous injuries. He further submitted that the other co-accused persons whose anticipatory bail application is rejected by this Court are still untraceable and therefore the application of the present applicant be rejected. The learned A.P.P. further submitted

that the applicant is having criminal antecedents namely; Crime No.131/2017 and therefore submitted that the application of the present applicant be rejected.

10. In order to further the case of the applicant, Mr. Sunil Manohar, learned Senior Advocate for the applicant submitted that insofar as the antecedents of the present applicant are concerned, that can be taken care of by putting a condition on the applicant that if in future any type of offence is registered against him that can be a cause for the investigating officer to file an application before this Court for cancellation of the bail. The learned Senior Advocate further submits that the applicant is only 19 years of age and is taking education in a reputed college in Nagpur and therefore a student must know that if during continuance of the liberty granted to him by a Court, he has to follow the law very strictly and should not indulge in any such activity resulting into registration of a criminal offence.

11. The investigation so far as the present applicant is concerned is over. Only filing of the charge-sheet is remained to be done; is the statement of the learned A.P.P. from the instructions received from the investigating officer who is personally present in the Court hall.

12. Two persons who suffered grievous injuries, even according to the learned A.P.P. were discharged after seven days of their admission. The incident is dated 21.10.2017

and thus after seven days of the incident they were discharged. Thus, today there is no even remote chance of converting the offence into more graver one.

13. From the applicant, there is no recovery. What is seized is the clothes which were allegedly on his person at the time of incident. The said seizure memo is dated 31.12.2017. The seizure memo shows that the clothes were seized from one Manish Sahu and not from the present applicant. Further, the seizure memo depicts that the clothes were not stained with blood.

14. Cross complaints are having potential of false implication especially when the warring groups are political rivals of each others. Though the application for bail is opposed on the ground that the co-accused whose anticipatory bail application is rejected by this Court are untraceable, it is not the prosecution case that in any way the present applicant, though from inside the jail is maneuvering in such a fashion to provide any type of help to the co-accused who is untraceable. It is the job of the investigating officer and police machinery to trace out the absconding accused persons. However, that cannot be the ground to claim the rejection of bail application especially when the person whose bail is sought to be opposed on the said ground is not conduit for the said absconsion. Therefore, statement of the learned A.P.P. in that behalf is rejected.

15. In that view of the matter, following order is passed.

ORDER

- (i) Criminal Application No.31/2018 is allowed.
- (ii) Applicant-Arjun s/o Omprakash Yadav be released on bail in connection with Crime No.226/2017 registered with Police Station, Dhantoli, Nagpur for an offence punishable under Sections 141, 143, 147, 148, 149, 323, 324, 325, 452 and 307 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 135 of the Bombay Police Act, on he executing P.R. Bond in the sum of Rs.50,000/- with two solvent sureties in the like amount.
- (iii) The applicant shall attend Police Station, Dhantoli, Nagpur twice a week i.e. on every Monday and Wednesday and shall remain with the investigating officer between 04.00 p.m. to 06.00 p.m. till the filing of the charge-sheet and after filing of the charge-sheet shall attend Police Station once in a month till culmination of the trial,. He shall attend the Police Station on last Sunday of every month.
- (iv) The applicant shall not indulge in any such activity which may hamper further investigation.
- (v) The applicant shall not cause any type of threats to any of the prosecution witness.
- (vi) It is made clear that if it is noticed by the investigating officer that any of the conditions is breached and as stated by the learned Senior Advocate, if in future any offence is registered against the present applicant in any of

the Police Station in Nagpur City then in that event, it will be open for the investigating officer to file an application before this Court for cancellation of bail granted to the applicant.

(vii) The observations made in this order are prima facie in nature and they are made only for the limited purpose of considering the application for bail. The learned trial Court shall not get influenced by any of the aforesaid observations.

The application stands disposed of accordingly.

JUDGE

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