

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

CRIMINAL APPLICATION (APPLN) NO.42 OF 2018

(Suo Motu Courts on its own motion Vs. Amarjeet Singh Mahindra Singh Lubhana)

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

Court's or Judge's orders.

Shri Anil Mardikar, Senior Counsel for Respondent.
Shri V.A. Thakare, APP for State.

CORAM: ROHIT B. DEO, J.

DATE: 5th JULY, 2018.

During the hearing of Criminal Application 490/2018, the attention of the court was invited to the order dated 26.04.2018 in Misc. Criminal Application 1058/2018, by and under which, the learned Additional Sessions Judge, Nagpur released a co-accused Amarjeet Singh Mahindra Singh Lubhana on bail.

In paragraph 4 of the said order the learned Sessions Judge observes thus, which are the only reasons recorded for grant of bail.

4] Taking into account allegations against that he accepted Rs. 5 lacs and sent two boys to accused who deported them on their own names posing them as father by making false document and further aspect that said involvement of applicant is surfacing on record through statement of co-accused. I find, applicant cannot be detained by way of punishment. Hence, order.

Order

- 1] The application Exh-1 is allowed.*
- 2] The applicant Amarjeet Singh Mahindra*

Singh Lubhana, be released on bail in Crime No. 21 of 2018 registered by police station Panchpaoli, Nagpur for the offences punishable under Sections 465, 467, 471, 474, 420, 120 (b), 371, 201 of Indian Penal Code and Section 12 of the Pass-port Act, 1968 on executing PR bond and S.B. Bond of Rs. 15,000/- with one surety of like amount on following conditions :

i] That the applicant shall make himself/herself available for interrogation by a police officer as and when required.

ii] That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

iii] The applicant shall attend court dates regularly, without fail.

iv] The applicant shall not leave India without the previous permission of the Court.

The observation of the learned Sessions Judge that the involvement of Amarjeet Singh Lubhana has surfaced through the statement of co-accused was found to be contrary to record. This factually incorrect observation, *inter alia* impelled this court to issue *suo motu* notice for cancellation of bail.

The learned Senior Counsel Shri Anil Mardikar, who appears for Amarjeet Singh Lubhana fairly concedes that the said observation is factually incorrect. The involvement of Amarjeet Singh Lubhana has surfaced

through the statement of one Avtarsingh, who is not a co-accused. Shri Mardikar would however, submit that notwithstanding the said error, the order granting bail needs no interference since the discretion exercise by the learned Sessions Judge in granting bail is neither arbitrary nor perverse. Shri Mardikar has taken me through the entire material on record to demonstrate that other than the statement of Avtarsingh, there is absolutely no material on record to connect Amarjeet Singh Lubhana with the crime. In response to a query made by this court, the Investigating Officer candidly stated that the only material against Amarjeet Singh Lubhana is the statement of Avtarsingh.

The case of the prosecution is that Amarjeet Singh Lubhana assisted Harpreet Singh, Ramandeep Singh and Gurmail Singh to go to United Kingdom on the strength of Pass Port and Visa which were obtained on the basis of false and fabricated documents.

In so far as Harpreet Singh is concerned his father Bhupinder Singh has sworn an affidavit which exculpates Amarjeet Singh Lubhana. Bhupinder Singh has attributed the entire role to one Jainal Singh. The 161 statement of Bhupinder Singh is on similar lines. In so far as Ramandeep Singh is concerned, the 161 statement does not attribute any role to Amarjeet Singh Lubhana. It is only Avtarsingh Surajsingh Multani who states in the 161 statement dated 29.01.2018 that it was Amarjeet Singh Lubhana who demanded Rs.5 lacs to send his son Babandeep Singh to United Kingdom and upon such payment Amarjeet Singh

Lubhana secured a Pass Port in which the name of Babandeep Singh was recorded as Babandeep Singh s/o Balvir Singh Multani. This statement, as observed earlier, is the only material which according to the prosecution connects Amarjeet Singh Lubhana to the crime.

The statement of Avtarsingh is not confidence inspiring even at the stage of *prima facie* evaluation of material on record. Amarjeet Singh Lubhana is the brother of co-accused Jasvinder Kaur Multani and the brother-in-law of co-accused Balvir Singh Multani. If the statement is considered holistically, the major role is attributed to Balvir Singh who attended the Visa interview along with Babandeep Singh and accompanied Babandeep Singh to United Kingdom. Avtarsingh does state that his brother-in-law Balvir Singh acted at the instance of Amarjeet Singh Lubhana. However, the submission of the learned Senior Counsel Shri Mardikar is that Amarjeet Singh Lubhana is implicated due to a family feud. If the statement of Avtarsingh is considered in totality, it is inexplicable why Avtarsingh is not arrayed as an accused and it is further strange that rather than handing over the amount to his sister Jasvinder Singh or brother-in-law Balvir Singh why Avtarsingh handed over the amount of Rs.5 lacs to Amarjeet Singh Lubhana, is the submission. It is ultimately for the trial court to arrive at appropriate findings after the evidence is recorded. However, *prima facie* Amarjeet Singh Lubhana cannot be deprived of liberty only on the basis of the statement of Avtarsingh, which raises more questions

than provides answers.

It is trite law that this court would be slow to interfere in order granting bail. The parameters for cancellation of bail and rejection of bail are quite different. It is not even the case of the prosecution that Amarjeet Singh Lubhana has misused the concession or liberty. Although there is a factual error in the order of the learned Sessions Judge, the material on record shows that she has arrived at the right conclusion and the grant of bail cannot be said to be a capricious exercise of discretion.

In this view of the matter, the notice of cancellation of bail is dropped.

JUDGE