

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

CRIMINAL APPLICATION (APPLN) NO.63/2017

State of Mah., thr. Police Station Officer, City Kotwali, Akola, Taluka and District
Akola

..vs..

Salman Khan s/o Nasir Khan @ Raja Nasir Khan

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

Court's or Judge's Order

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Shri N.R. Rode, Addl.P.P. for the applicant/State.

Shri V.R. Deshpande, Counsel for the non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 10, 2018.

1. Heard learned Additional Public Prosecutor Shri N.R. Rode for the applicant/State and learned counsel Shri V.R. Deshpande for the non-applicant.

2. This is an application under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail granted in favour of non-applicant Salman Khan s/o Nasir Khan @ Raja Nasir Khan by learned 4th Additional Sessions Judge at Akola on 24.8.2017 in Misc. Criminal Application No.508 of 2017.

3. The offence was registered against the non-applicant by the Police Station Officer of City Kotwali, Akola vide Crime No.164 of 2017 for the offences punishable under Section 307, 323, 504, and 506 of the Indian Penal Code read with Sections 3 and 25 of the Arms

.....2/-

Act.

4. The first information report was lodged by one Avesh Khan on the allegation that on the day of the incident the non-applicant assaulted on him by kicks and fist blows and, thereafter, took out a pistol and put it on the head of the first informant.

5. It is not the prosecution case that at any point of time the pistol was used by the non-applicant and due to the same any injury was caused.

6. No doubt, true that injury is not *sine qua non* for the offence punishable under Section 307 of the Indian Penal Code. While considering the offence under Section 307 of the Indian Penal Code, what is required to be seen is the intention on the part of the assailant.

7. Had there was an intention on the part of the non-applicant to cause any bodily injury by using the pistol, he would not have missed the said opportunity.

8. During the pendency of the application for bail, the complainant himself filed a Pursis before learned Additional Sessions Judge at Akola pointing out that he never disclosed that the non-applicant has taken out the fire arm.

9. What is to be noted that at the time of consideration of the anticipatory bail application, the said Pursis was on record and it was always open for the investigating officer and learned Public Prosecutor Incharge of the brief to point out that the said Pursis is

the outcome of any influence that has been exerted on the first informant by the non-applicant. However, nothing sort has been done either by the investigating officer or the prosecuting agency.

10. The non-applicant was granted anticipatory bail on certain conditions. Till today, it is not the case of the investigating agency that the non-applicant has, at any point of time, flouted any of the conditions and/or has created any influence over the prosecution witnesses.

11. In view of this, in my view, the personal liberty, which is granted by learned Judge of the Court below to the non-applicant, cannot be curtailed merely merely asking by the prosecuting agency.

12. Hence, the criminal application is rejected and disposed of.

JUDGE

!! BRW !!

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