

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

Criminal Application [BA] No.1230 of 2017

(Ashwin Ravindra Kamble

vs.

The State of Maharashtra, through P.S.O., P.S. Selu, District Wardha)

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

Court's or Judge's Orders

CORAM : S.B. SHUKRE, J.
DATE : 15th JANUARY, 2018.

Heard Shri A.A. Naik, learned Counsel for
the applicant and Shri P.S. Tembhare, learned
Additional Public Prosecutor for the State.

02] Perused the copy of the charge-sheet filed
along with this application. Before I deal with the
arguments submitted by both the sides, I would like
to keep it on record that, as stated by the learned
Counsel for the applicant, on instructions, the
applicant has not filed any bail application before the
High Court or the Apex Court in the past and the
present application is his first application. Accepting
the above statement, I have heard the learned
Counsel for both the sides.

03] It is seen from the charge-sheet that F.I.R. in the present case has been filed on 19/03/2017 by the complainant-Mahananda. The allegations of launching deadly assault by the persons belonging to the group of the complainant have been made against the various persons in the F.I.R. On the basis of these allegations, offences punishable under Sections 143, 144, 147, 148, 326 and 302 read with Section 149 of the Indian Penal Code and also Sections punishable under Section 24 read with Section 4 of the Arms Act and Section 135 of the Maharashtra Police Act have been registered against several persons including the present applicant. The F.I.R. discloses that the incident of assault took place at about 02:30 p.m. of 19/03/2017.

04] At this juncture, it has been pointed out by the learned Counsel for the applicant that there is also another F.I.R. filed by Nandkishor Wankhede, one of the accused in the present crime against some persons belonging to the group, the members of which have filed the present F.I.R. through Mahananda against said Nandkishor, present applicant and

others.

05] It is not in dispute that Nandkishor, the complainant in other crime, has also made similar allegations of launching dangerous assault upon the persons belonging to his group by the persons belonging to the group of complainant-Mahananda and the incident, as he has narrated in this F.I.R., took place at the same place and at the same time, as indicated in the F.I.R. filed by Mahananda. The incident referred to in this F.I.R. is alleged to have taken place between 02:30 p.m. and 03:00 p.m. on 19/03/2017 at the same spot of incident as the one involved in the F.I.R. lodged by Mahananda. So there is a *prima facie* material available on record, which indicates that in the present case, there were two rival groups, the members of which have filed an F.I.R. and counter F.I.R. against each other in respect of the same incident occurred during the course of the same transaction. With this background, now we have to examine the *prima facie* involvement of the applicant in the crime registered against him.

06] It is seen from the charge-sheet filed in the crime registered against this applicant and others that the complainant has not attributed any overt act

to the applicant. She has also not stated anything about the applicant holding in his hand a sword at the time of the incident. Her statement under Section 164 of the Code of Criminal Procedure has been recorded by the learned Magistrate in the present case. Even this statement does not attribute any overt act to the present applicant.

07] It appears that there are several eye-witnesses to the incident in question. Most of the eye-witnesses, a bare perusal of their statements, would show, do not attribute any overt act to the present applicant. However, there are three eye-witnesses viz. Sachin, Gajanan and Baby, who say that at the time of the incident, this applicant was holding in his hand a sword. But even these witnesses do not say anything about actual use of the sword by this applicant in the assault allegedly made against the persons belonging to the group of the complainant in the present crime. Even otherwise, what seems to be the case here is that, there are two sets of eye-witnesses, one saying nothing against the present applicant except for his presence at the spot of incident at the relevant time and the other saying

about his holding in his hand a sword at the relevant time, In such a case, a detailed evidence can only show as to who is right and who is not and till that happens, there would be doubt about *prima facie* involvement of the applicant in launching an assault on the persons belonging to the group of the complainant in the present crime or his sharing a common object as alleged against him with the other culprits.

08] The *prima facie* observation so made at this stage also needs to be considered along with other material available on record, which shows that no sword has been recovered at the instance of this applicant or which could be attributed to this applicant. Admittedly, the applicant's clothes were seized in the night of the same day on which the incident occurred, but there were no blood stains noticed on them at that time.

09] Shri P.S. Tembhare, learned A.P.P. for the State vehemently opposing this application submits that it is settled that there is no need to lead on record any specific evidence showing a particular act

of violence actually committed by the accused, when the guilt of the accused is sought to be proved through the principle of common object incorporated in Section 149 of the Indian Penal Code. There is no doubt about the settled position of law in this regard. But, this would be something, which needs to be proved by the prosecution by leading detailed evidence from which an inference could be drawn about sharing of common object or otherwise by the present applicant. If, at the stage of consideration of the bail application, any such inference is to be drawn, though it can be drawn, it can only be in the nature of *prima facie* observations based upon the material produced before the Court and taken as it is without any subtraction or addition made thereto. Such material, at this stage, is not seen to be present on record and I have already discussed about the same in the earlier paragraphs.

10] The charge-sheet has already been filed on 13/06/2017 and it is stated, on instructions, on behalf of the applicant that as yet no charge has been framed against the applicant. The applicant is in jail since 19/03/2017 and when the charge-sheet was

filed almost within three months thereafter, I am of the view that ordinarily there should have been no reason for the trial Court to not frame the charge in this case. But the fact is that even after a period of almost six months, no charge has been framed against the applicant and others. This would show that there is already some delay in framing of the charge. Of course, the reasons for not framing of the charge are not known and, therefore, at this stage, no finding can be recorded as to who is responsible for the delay in the present case. Suffice it to say that the circumstances present on record reasonably indicate now that the trial of the case against the applicant is not likely to be over within a reasonable period of time. That apart, there is a doubt about prima facie involvement of the applicant in the offence registered against him, at least, at this stage. The applicant is also having roots in the society and has no criminal antecedents.

11] In the circumstances, I am of the view that now this is a fit case for grant of bail by imposing suitable conditions to allay the apprehension of the prosecution about likely influence that the applicant

when released on bail may bring upon the witnesses.

12] Application is allowed. It is directed that the applicant be released on bail on his furnishing a P.R. Bond of Rs.1,00,000/- together with two solvent sureties in the sum of Rs.50,000/- each on the following conditions:

- i. The applicant shall not stay at Khapri (Seloo), District Wardha till the trial of the case is over and shall submit his new address with telephone number (Cell phone) to the Seloo Police Station as well as trial Court, within 15 days of his release and any failure to do so, shall result in automatic cancellation of bail granted hereunder.
- ii. The applicant shall not tamper with or attempt to influence the prosecution witnesses in any manner.
- iii. The applicant shall cooperate with the trial Court in expeditious disposal of the case and shall not seek any adjournment unless

justified by reasons beyond control of the applicant, and shall regularly attend the trial Court on dates fixed for his appearance, except when his personal appearance is exempted for justified and proper reasons.

- iv. The application is disposed of in the above terms.

**sdw*

JUDGE