

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

Criminal Application (BA) No.352 of 2019
(Sheikh Arif Sheikh Ibrahim .vs. State of Maharashtra, through PSO, P.S.
Shirpur, Tq. Wani, Dist. Yavatmal)
with
Criminal Application (BA) No.353 of 2019
(Sheikh Arif Sheikh Ibrahim .vs. State of Maharashtra, through PSO, P.S.
Shirpur, Tq. Wani, Dist. Yavatmal)

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

Court's or Judge's orders.

Mr. Abdul Subhan, Advocate for Applicants.
Mr. A.D. Sonak, APP for Non-applicant/State.

CORAM : Manish Pitale, J.
DATED : June 03, 2019.

These two applications have been filed by the same applicant seeking regular bail in respect of two first information reports, pertaining to the very same incident dated 09.03.2019 whereby offences under various provisions of the Indian Penal Code have been registered against the applicant, including offences under Section 326 of the IPC for causing grievous hurt and Section 353 of the IPC for obstructing public servant in performing his duty.

2. The applicant was arrested on 09.03.2019 and he is in custody since then. The contention of the applicant is that even if contents of the FIR are taken into consideration and they are read with the statements made by the injured witnesses before the Police, at worst the presence of the applicant is made out while no overt act is attributable to the applicant. It is further stated that three other accused persons have been

already granted bail. On this basis, it is contended that since the investigation is over and the charge-sheet is already filed, the applicant deserves to be granted bail.

3. The non-applicant/State has filed affidavit-in-reply opposing grant of bail to the applicant, *inter alia*, pointing out that the applicant has criminal antecedents and that if bail is granted to him, there is a clear chance of evidence being tampered with and the witnesses being influenced by the applicant.

4. A perusal of the reply filed on behalf of the non-applicant/State and the list of offences registered against the applicant goes to show that the applicant has been indeed involved in other incidents, although some of them pertain to non-cognizable reports and in two cases he has been acquitted.

5. The statements made by the witnesses, which are part of the charge-sheet filed before the trial Court, when compared with the contents of the oral report leading to the registration of the FIR, show that the applicant appears to have been present at the time of the incident, at worst, and that the description of role attributed to him appears to be slightly different in the oral report, when compared with the statements of the witnesses. This is only a *prima facie* opinion of this Court, but it does show that when the investigation is already over and the charge-sheet is already filed before the trial Court, further custody of the applicant may not be required, provided he cooperates with the investigation, if any further steps are required to be taken by the investigating agency and appropriate conditions are imposed to address the apprehension

expressed on behalf of the non-applicant/State that there is a clear possibility of the applicant tampering with the evidence and influencing the witnesses. In this backdrop, the present applications can be allowed conditionally.

6. In view of the above, the present applications are allowed and the applicant is directed to be released on bail on the following conditions:-

(i) The applicant shall furnish P.R. bond of Rs.50,000/- (Rs. Fifty Thousand) with surety of like amount.

(ii) The applicant shall not enter within the limits of Police Station Shirpur, taluka Wani, district Yavatmal, during the pendency of the trial.

(iii) The applicant shall inform the trial Court about the place of his residence outside the limits of Police Station Shirpur, taluka Wani, district Yavatmal, during the pendency of the trial and he shall report once in a week i.e. on Monday before the Police Station in whose jurisdiction he chooses to reside during the pendency of the trial, between 10 a.m. and 5 p.m. If the applicant further changes his place of residence during the pendency of the trial outside the limits of Police Station Shirpur, taluka Wani, district Yavatmal, he shall inform the trial Court regarding the same and then report to the concerned Police Station in the aforesaid manner.

(iv) The applicant shall not tamper with the evidence or influence the witnesses.

7. The applications are allowed in above terms.

Needless to say if applicant violates any of the conditions stated above, the bail granted to him shall stand cancelled.

JUDGE

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