

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

CRIMINAL APPLICATION (ABA) NO.340/2019

Swapnil s/o Kacharu Unawane

..VS..

Vinod s/o Joshi Athilkar and anr

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

Court's or Judge's Order

.....
Shri N.A.Gaikwad, Counsel for the Applicant.
Shri K.S.Motwani, Counsel for Non-applicant No.1.
Shri N.R.Rode, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : AUGUST 27, 2019.

1. Heard learned counsel Shri N.A.Gaikwad for the applicant, learned counsel Shri K.S.Motwani for non-applicant No.1, and learned Additional Public Prosecutor Shri N.R.Rode for non-applicant No.2/State.

2. This is an application for pre-arrest bail. Apprehension in the mind of the applicant, who is working in police department as Assistant Police Inspector, is regarding order of issuance of process passed on 2.5.2019 by learned Magistrate in Regular Criminal Case No.103/2016 for offences under Sections 307, 335, 323, 294, and 342 of the Indian Penal Code.

3. Few facts which are necessary to decide the present application are as under:

In the year 2016, the applicant was discharging his duties as Assistant Police Inspector at Tirora Police

Station, District Gondia. Non-applicant No.1, on 10.10.2016 filed a private complaint in the Court of learned Magistrate alleging therein that his wife lodged a complaint with Women Redressal Cell. Accordingly, she was directed to remain present on 29.8.2016 at Tirora Police Station. In pursuance to that, when they attended, as per allegations, the present applicant called non-applicant No.1 in his chamber and abused and assaulted by kick and fists blows, resultantly he suffered injuries on his shoulder and head. Therefore, the complaint was filed and enquiry was sought under Section 156(3) of the Code of Criminal Procedure.

4. Initially, learned Magistrate on 16.11.2017 dismissed the complaint for want of sanction. Felt aggrieved by the said, non-applicant No.1 filed a criminal revision which was registered as Criminal Revision No.53/2017 and Revisional Court allowed the revision on 14.6.2018 and upset order passed by learned Magistrate dismissing the complaint and Revisional Court directed learned Magistrate to pass appropriate orders afresh.

5. The applicant after registration of the complaint filed an application on 3.9.2018 in the Court of Sessions since he was apprehending his arrest. The said application was registered as Misc. Criminal Bail Application No.232/2018. In the said application, an application for *ad interim* bail was also filed. Learned Additional Sessions Judge, Gondia on 3.9.2018 allowed the application for *ad interim* bail with certain conditions. Ultimately, the application for pre-arrest bail was rejected on 6.10.2018

giving rise to the present application.

6. On 7.6.2019, this Court (Coram : Manish Pitale, J.) granted *ad interim* pre-arrest bail in favour of the applicant and imposed conditions that the applicant shall not influence witnesses nor shall enter into area within the radius of 1000 meters from residence of non-applicant No.1, and witnesses and shall not leave district Gondia without prior permission of learned Magistrate of Tirora, District Gondia.

7. Record shows that on 5.7.2019 this Court (Coram : Manish Pitale, J.) relaxed the condition as not to leave district Gondia in view of fact that meanwhile the applicant was transferred from Gondia to Nashik Region. It is reported to the Court that in pursuance to the relaxation of the condition as not to leave district Gondia, the applicant joined his services at Jalgaon City.

8. According to the complaint filed by non-applicant No.1, incident in question occurred on 29.8.2016.

9. Record shows that before Sessions Court reply was filed by Tirora Police Station Officer. The said reply is at page No.47 of the compilation of the present application which shows that for the incident the non-applicant No.1 did not approach to the police station nor filed any complaint nor any cognizable or non-cognizable offence is registered against the applicant.

10. In the complaint filed by non-applicant No.1, non-applicant No.1 did not offer any explanation as to why the complaint was lodged on 10.10.2016 for the incident

dated 29.8.2016. Though the statement is made in the complaint by non-applicant No.1 that he received injuries on his shoulder and head, no document in the nature of medical injuries is filed on record. Even, during the course of hearing of the present application, when that question was put to learned counsel Shri K.S.Motwani for non-applicant No.1 to show medical certificate of doctor who examined non-applicant No.1, learned counsel was required to cut sorry figure. Consequently, there is no *prima facie* evidence to show that non-applicant No.1 suffered any injuries.

11. This Court is mindful for offence under Section 307 of the Indian Penal Code. The injury is not *sine quo non*, however in the given circumstances it was expected from non-applicant No.1 to substantiate his allegations especially when certain allegations are made against the Assistant Police Inspector and no explanation is offered for delayed complaint.

12. The present application is vehemently opposed by learned counsel Shri K.S.Motwani for non-applicant No.1 that the applicant being a police officer may influence the course of the application filed by him. In my view, his submission cannot appeal to any judicial mind especially when admittedly presently the applicant is discharging his duties at far away place at Jalgaon.

13. It is not complaint of non-applicant No.1 that during the pendency of the application before the Sessions Court or before this Court, when the applicant was protected by *ad interim* order with certain conditions, he misused his

liberty granted to him in his favour.

14. In view of the aforesaid discussions, since I am of the view that the applicant who is working as a police inspector and will be available to the course of justice, I pass following order:

ORDER

(i) The criminal application is allowed.

(ii) In the event of arrest of applicant-Swapnil s/o Kacharu Unawane, in connection with order of issuance of process passed on 2.5.2019 by learned Magistrate in Regular Criminal Case No.103/2016 for offences under Sections 307, 335, 323, 294, and 342 of the Indian Penal Code, he be released on bail on he executing a P.R.Bond in the sum of Rs.5000/- with one solvent surety of the like amount.

(iii) The applicant shall not influence the course of the application pending before learned Magistrate.

(iv) With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

...../-