

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

CRIMINAL APPLICATION (BA) NO.809/2019

Pratik s/o Dattatray Tonde

..VS..

State of Mah., thr. PSO PS Civil Lines, Akola, Taluka and District Akola

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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

Shri Subodh Dharmadhikari, Senior Counsel for the
Applicant.

Shri M.J.Khan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : SEPTEMBER 11, 2019.

1. The applicant is seeking his release on bail since he is arrested on 9.5.2019 in connection with Crime No.225/2019 registered with Civil Lines Police Station, Akola, Taluka and District Akola for offences under Sections 302, 143, 147, 148, 149, 201, 109, 323, 327, and 506 of the Indian Penal Code and under Section 3 of the Prevention of Damage to Public Property Act, 1984.

2. Heard learned senior counsel Shri Subodh Dharmadhikari for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

3. Learned senior counsel submitted that name of the present applicant did not figure when criminal law was set into motion by complainant Pravin Kisanrao Hundiware and his name is appeared on the next day of incident when statement under Section 161 of the Code of Criminal

Procedure of the complainant was recorded so also statements of other witnesses. His another submission is that police statement of the complainant as well as witnesses show that the applicant has not participated in assault on Kisanrao, the deceased. Role attributed to the present applicant, according to learned senior counsel, is that he pushed Pravin, the complainant, towards door and along with other co-accused he was caught hold. He, therefore, submitted that looking to fact that chargesheet is filed, the applicant can be released on bail by imposing stringent conditions. He submitted that even the applicant is ready to reside outside territorial jurisdiction of Akola Municipal Council during the pendency of Trial.

4. *Per contra*, learned Additional Public Prosecutor Shri M.J.Khan for the State, submitted that name of the present applicant is appearing in the prosecution case if statements of witnesses are perused. He submitted that specific role is ascribed to the present applicant by prosecution witnesses. He submitted that in most ghastly manner Kisanrao, the deceased, was done to death and, therefore, the application of the applicant be rejected.

5. First Information Report is lodged by Pravin Kisanrao Hundiware on 6.5.2019. Gist of the report shows that there is a dispute between two groups for having control over “Swami Viveknand Rashtriya Shikshan Prasarak Mandal, Khetan Nagar, Kolkhed, Akola” and “Swami Vivekanand English Highschool, Khetan Nagar, Kolkhed, Akola.” The dispute is pending in the Court of Assistant Charity

Commissioner.

6. On one hand, Pravin's father Kisanrao and on another accused Shriram Gawande are litigating with each other.

7. As per the report, on the day of incident dated 6.5.2019, when the complainant and Kisanrao, the deceased, were discussing about their case with their Advocate Nitin Dhoot, whose statement is also recorded during the course of investigation, Vikram @ Chotu Shriram Gawande, Ranjit Shriram Gawande, Dheeraj Pralhad Gawande, Sooraj Pralhad Gawande, Shriram Gawande, and Pravin Shriram Gawande came along with Satish Tayde, Vishal Tayde, Sabir. They immediately started assaulting Kisanrao. Specific role is attributed in the First Information Report *qua* each of accused persons whose names are disclosed in the First Information Report.

8. From the First Information Report, therefore, it is crystal clear that name of the present applicant was not appearing.

9. Statement of complainant Pravin Hundiwale was recorded on 7.5.2019 and on the said day statements of other witnesses i.e. Advocate Nitin Dhoot, Sooraj Gawande, Rajesh Wankhede, and Jaishan Raghunath Gudaghe were also recorded. Examination of their statements shows that they attributed presence of the present applicant on the spot of incident. Not only they attributed specific role against the present applicant that he along with other co-accused persons apart from persons who were named in the First

Information Report pushed the complainant towards door and there they caught hold him. None of witnesses does attribute anything against the present applicant that he took any step either to assault Kisanrao, the deceased, or even complainant Pravin Hundiwale.

10. Presently, the Court is not deciding the matter on its own merits.

11. At this stage, the Court has to consider whether custodial presence of the present applicant is further continued or not.

12. Since entire investigation is over, chargesheet is already filed, and role of the present applicant is detailed in the chargesheet, in my view, the applicant need not be continued his jail presence. In the result, I pass following order:

ORDER

(a) The criminal application is allowed.

(b) Applicant-Pratik s/o Dattatray Tonde be released on bail, in connection with Crime No.225/2019 registered with Civil Lines Police Station, Akola, Taluka and District Akola for offences under Sections 302, 143, 147, 148, 149, 201, 109, 323, 327, and 506 of the Indian Penal Code and under Section 3 of the Prevention of Damage to Public Property Act, 1984, on his executing a P.R.Bond in the sum of Rs.50,000/- with two solvent sureties of the like amount.

(c) The applicant is directed to furnish his address of

residence before learned Judge of Court below before whom he will be furnishing his Bail Bonds.

(d) Learned Judge of Court below before whom Bail Bonds will be executed shall issue directions to the applicant that he shall attend police station nearest to his residence twice in a week during the pendency of Trial.

(e) The applicant shall not enter into territorial jurisdiction of Akola Municipal Council during the pendency of Trial except on dates when the case is fixed before Court below.

(f) The applicant shall not give any type of threat to any of prosecution witnesses.

(g) If it is noticed that the applicant is committing breach of any of conditions, it shall be open for Investigating Officer to file an application for cancellation of bail.

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

JUDGE

!! BRW !!

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