

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

CRIMINAL APPLICATION (BA) NO.17/2020

Ganesh s/o Khushlal Sivarkar .vs. State of Maharashtra through PSO P.S.
Bhadrawati, Tq. Bhadrawati, Dist. Chandrapur.

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

Court's or Judge's orders.

Mr. N. A. Chawhan, Advocate for applicant.
Mr. P. S. Tembhare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : FEBRUARY 6, 2020

Heard Mr.Chawhan, learned counsel for applicant
and Mr. Tembhare, learned A.P.P. for non applicant-State.
Also perused the reply and the investigation papers.

Learned counsel would submit that the learned
Judge of the Court below has granted bail in favour of the
co-accused Gajanan Kshirsagar and his case is identical with
the present applicant and in spite of that the learned Judge
of the Court below has rejected the bail application. He
submits that nothing is recovered at the instance of the
present applicant. He, therefore, submits that the applicant
be released on bail.

Per contra, learned A.P.P. would submit that
investigation is in progress and charge-sheet is yet to be filed
and, therefore, bail application be rejected.

The applicant is arrested in connection with
Crime No.303/2019, registered with Police Station
Bhadrawati, Dist. Chandrapur for an offence punishable

under Section 379 read with Section 34 of the Indian Penal Code (IPC). The applicant is arrested on 16.12.2019 and since then he is languishing in jail.

As per the prosecution case, Bandu Balaji Khanke lodged a report with Police Station disclosing therein that he is in employment of Western Coalfields and is posted at New Kunda Chargaon Sub Area site as Chief Security Person. As per the report, at the said site, auction purchaser one Karim Lala stored 150 Tonnes of scrap material. Out of the said, he transported 70 Tonnes of scrap and remaining 80 Tonnes was lying on the spot since it was in cutting process. The complaint further states that on 21.05.2019 when said Khanke had been to the site for checking the security arrangement, that time, one security person by name Godsel Lukas informed the complainant that in the intervening night of 20.05.2019 and 21.05.2019 at about 02.00 a.m. he witnessed 4-5 persons stealthily removing the stored scrap material on the motorcycle and when he focused light of torch, he recognized the present applicant as well as co-accused Ganpat and Mahesh. According to the complaint, scrap worth Rs.52,000/- was taken away.

Learned A.P.P., from the investigation papers could not point out that anything was recovered at the behest of the applicant when was in the Police Custody Remand. According to the learned A.P.P., the applicant was identified by Godsel Lukas as it could be seen from his statement recorded by the investigating officer during the course of investigation. Statement of said Godsel Lukas

would show that he not only identified the applicant but also co-accused Ganpat. This co-accused Ganpat filed an application for bail before the learned Judge of trial Court and the learned trial Court released the said co-accused on bail. However, curiously without there being any additional circumstance against the present applicant, the very same learned Judge rejected the application for bail filed on behalf of the applicant which, in my view, is contrary to the principles of parity. Learned Judge of the Court below ought to have seen that case of Ganpat and the present applicant is at par and when the learned Judge is exercising its discretion in favour of the co-accused, for the very same material collected against the applicant, rejection of the bail application of the applicant is nothing but travesty of justice.

Applicant is not having any past criminal record as submitted by learned A.P.P. Investigation papers show that stolen articles are already seized from one godown.

In view of the aforesaid and looking to the fact that the applicant is not having any past criminal record, in my view, the applicant can be released on bail by imposing certain conditions. Hence, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Ganesh s/o Khushal Shivarkar be released on bail in connection with Crime No.303/2019, registered with Police Station Bhadrawati, Dist. Chandrapur for an offence punishable under Section 379 read with

Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(iii) The applicant is directed to attend Police Station twice a week i.e. on Monday and Wednesday of each week between 11.00 a.m. to 05.00 p.m., till filing of the charge-sheet. After filing of the charge-sheet, the applicant shall attend Police Station twice a month i.e. on first and third Saturday for next six months and shall be with the investigating officer from 11.00 a.m. to 05.00 p.m.

The application is disposed of.

JUDGE

kahale