

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

CRIMINAL APPLICATION (BA) NO. 198 OF 2020

(Nikesh @ Nikku Chagan Meshram, Gadchiroli (In jail) Vs. State of Maharashtra, thr.PSO
Nagbhid, District Chandrapur)

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

Court's or Judge's orders.

Shri D.V. Chauhan, Advocate for the applicant.
Mrs. M.A. Barabde, A.P.P. for the non-applicant.

CORAM : PUSHPA V. GANEDIWALA, J.
AUGUST 20, 2020.

Heard Shri Chauhan, learned counsel for the applicant and Mrs. Barabde, learned A.P.P. for the non-applicant/State through Video Conferencing.

2. The applicant is said to be arrested on 11/11/2018 in connection with Crime No. 439/2018 dated 06/11/2018 registered at Police Station, Nagbhid, District Chandrapur for the offence punishable under Sections 302, 307, 353, 332, 333 and 120B of the Indian Penal Code, 1860 (for short "IPC"), Sections 65A, 82 and 83 of the Maharashtra Prohibition Act, 1949 (for short "Act of 1949") and Sections 3 of the Maharashtra Control of Organized Act, 1999 (for short "MCOC").

3. The prosecution case in brief is that PSI Achalkumar Shantaram, Malkapur, attached with the Police Station, Nagbhid, lodged a report against accused persons stating therein that during Nakabandi at one bridge of Gosikhurd Canal Road

Dhorpa village, one white colour Scorpio car bearing registration No. MH-34-AM-2810, carrying illegal liquor was tried to be intercepted, but the driver of that car, without stopping it, deliberately driven the said vehicle in a rash and negligent manner and caused injury to PSI Chhatrapati Kishan Chide, who later on succumbed to the injuries.

4. It is stated that the other co-accused involved in the present crime are having criminal antecedents and as such, provisions of MCOC is made applicable, as there is a crime syndicate run by the accused namely Shehjad Shaikh, he being a leader. That the other co-accused are habitual offenders and they used to supply liquor at the ban district of Chandrapur and Gadchiroli.

5. The allegations against the present applicant is that he was present along with the accused persons and he has also participated in the conversation with the accused persons. During investigation, it is also transpired that the present applicant was present in Swift Dzire car bearing registration No. MH-31-EQ-0408 and they were violating the main vehicle having illegal liquor.

6. During confessional statement of the co-accused, it is revealed that the services of the present applicant was hired in connection with the present offence by the gang leader Shahjad Shaikh. It is also alleged that the present applicant and the other

accused tampered the registered number plate of the vehicle, which has given dash to PSI Chhatrapati.

7. It is further alleged that the present applicant, being a member of Shahjad gang, is doing illegal activities of transportation of liquor in prohibited Districts and for the same, they are going to the extent of killing the police personnel also.

8. Learned counsel for the applicant submitted that there is absolutely no role of the present applicant in the offence punishable under Section 302 of IPC and at the most, Section 201 may be applied against him.

9. With regard to the confessional statement of the co-accused, learned counsel for the applicant submitted that at this stage, the said statement cannot be used and it has to be tested in the trial.

10. I have considered the aforesaid submissions.

11. At the outset, undisputedly, out of eighteen accused, nine accused in the instant case have already been released on bail either by this Court or by the learned Sessions Court. In the entire chargesheet, there are no direct allegations with regard to the offence of murder against the present applicant. As far as offence under Section 302 of IPC is concerned, the role attributed to the present applicant is only with regard to his sitting in the pilot car along with the co-accused, which speaks for itself.

12. With regard to applicability of offence punishable under MCOC, at this stage, the prosecution could not point out as to how the present applicant, either individually or jointly, as a member of crime syndicate, committed any offence for pecuniary gain. The criminal antecedents against the present applicant are mainly for the offence punishable under the Act of 1949 in his individual capacity. The applicant is in jail since more than one and a half year.

13. In the given facts so also looking to the role attributed to the present applicant coupled with the fact that the co-accused, with more or less similar role, are on bail, this Court is of the opinion that by imposing stringent conditions, the present applicant can be released on bail. Hence, the following order :-

ORDER

- i) The Criminal Application is allowed.
- ii) The applicant be released on bail on his furnishing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- iii) The applicant shall not pressurize or issue threats to the witnesses.
- iv) The applicant shall not tamper with the prosecution evidence.
- v) The applicant to supply his residential address and mobile number to the concerned police

station and shall not change the same, pending trial.

vi) The applicant shall not leave the local jurisdiction without prior intimation to the concerned police station.

vii) The applicant to attend the concerned police station on every first Thursday of each month between 12.00 noon to 2.00 pm.

14. The Criminal Application is disposed of accordingly.

15. The observations made above is only for deciding the bail application and it shall not prejudice the case of the prosecution during trial.

16. This order be communicated to the counsel appearing for the parties, either on the email address or on Whats app or by such other mode, as is permissible in law.

JUDGE