

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

CRIMINAL APPLICATION (APPLN) NO.70 OF 2018

(The State of Maharashtra, through PSO, PS Gittikhadan, Nagpur ..vs.. Sumit s/o Rajkumar Thakur)

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

Court's or Judge's orders

Shri M.J. Khan, Addl.P.P. for the applicant/State,
Shri Devendra Chauhan and Shri A. Kesari, Counsel for the non-
applicant.

CORAM : ROHIT B. DEO, J.

DATED : 02-03-2020

Respondent-Sumit Thakur is facing twenty-two prosecutions/trials, one of which is in connection with Crime 451/2015 registered with Police Station Gittikhadan, Nagpur for the offences punishable under Sections 143, 147, 148, 149, 427, 323, 506-II, 504 and 279 read with Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3 of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act).

2. Sumit Thakur approached this Court in Criminal Application (BA) 188/2017 seeking enlargement on bail, which application was allowed vide order dated 13-4-2017. One of the conditions of bail was that Sumit Thakur shall not enter the city of Nagpur except on the dates fixed by the Court in the pending trial. Sumit Thakur committed breach of the condition of bail and entered the city limits of Nagpur on 10-8-2017 and 15-2-

2018. An offence punishable under Section 188 of the Indian Penal Code came to be registered against Sumit Thakur. The State prayed for cancellation of bail vide Criminal Application 8/2018 which was allowed vide order dated 07-3-2018. This Court observed thus :

“In view of the above, I find that the non-applicant has committed breach of condition in question, which would lead me to further infer that the conduct of the non-applicant does not deserve him the liberty of being at large granted by this Court any more. In this situation, the application deserves to be allowed and it is allowed accordingly.”

3. Sumit Thakur approached this Court vide Criminal Application (BA) 394/2018 accepting the mistake committed in violating the bail conditions and profusely apologizing. Sumit Thakur unconditionally apologized and solemnly assured this Court that the mistake shall not be repeated. This Court, therefore, showed indulgence and released Sumit Thakur on bail reiterating that Sumit Thakur shall not enter the city of Nagpur except on the dates fixed by the Court in the pending trial.

4. It would be apposite to note the observations in the order dated 02-5-2018 vide which Sumit Thakur was granted bail (Coram : S.B. Shukre, J.) :

“Now the applicant fairly accepts the mistake

committed by him in committing the breach of the condition of the bail order dated 13-4-2017. The condition violated by the applicant is relating to his keeping himself away from the city of Nagpur except on the dates fixed by the Court in the trial pending against him. The applicant, however, in breach of this condition, was found to be present in Nagpur along with his girl friend on 10-8-2017 and also on 15-2-2018. The applicant now regrets the mistake committed by him and has given his unconditional apology for the mistake so committed by him. He also assures that he would not repeat the mistake.”

5. The profuse apology and the solemn assurance not to breach the conditions of bail were, only ruse to secure undeserved liberty. Sumit Thakur not only entered the city of Nagpur in contravention of the bail condition on 26-6-2018, he is implicated as the prime offender in Crime 288/2018 registered with Gittikhadan Police Station, Nagpur for offences punishable under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code, Sections 3 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act. The allegation against the Sumit Thakur is that he attempted to kill the complainant Kuldeep Shashidhar Pande by opening fire at the complainant from handgun. The complainant escaped with relatively minor injuries. The State is, therefore, seeking cancellation of bail and the submission of the learned Additional Public Prosecutor Shri M.J. Khan is that Sumit Thakur, who was once shown indulgence by this Court, does not deserve to be at large.

Shri M.J. Khan would submit that Sumit Thakur has brazenly breached the bail condition. Sumit Thakur not only entered the limits of city of Nagpur, he attempted to eliminate a rival by using a firearm, which is duly recovered from Sumit Thakur pursuant to memorandum under Section 27 of the Indian Evidence Act. Shri M.J. Khan would submit that Sumit Thakur persuaded this Court to restore the bail cancelled for breach of the conditions of bail by the profuse and unconditional apology and the undertaking not to commit the mistake again. However, Sumit Thakur not only entered the city of Nagpur contrary to the bail conditions, he committed a grave offence and the irresistible inference is that the apology and the solemn undertaking was tendered only to take the process of law for a ride.

6. Shri Devendra Chauhan, learned Counsel who appears for Sumit Thakur, made a valiant effort to persuade me to hold that Sumit Thakur is falsely implicated in the alleged incident which occurred on 26-6-2018 and that on the day of the incident Sumit Thakur was not present on the spot. Shri Devendra Chauhan would submit that the complainant too has dubious record and during the investigation, the Investigating Officer found that two persons implicated by the complainant in the alleged assault were not present on the spot and, therefore, sought their discharge. Shri Devendra Chauhan would submit that

the version of the complainant is extremely doubtful, and the liberty of Sumit Thakur may not be curtailed on the basis of the implication at the behest of the complainant whose version is at least partially found untrue.

7. I am not impressed by the submission canvassed on behalf of Sumit Thakur. I have scrutinized the material in the charge-sheet. Ordinarily, I would have refrained from making any observation touching the presence or otherwise of Sumit Thakur at the spot of occurrence or in Nagpur on the day of the incident. However, I have been invited, and indeed constrained to do so, by the submissions canvassed by Shri Devendra Chauhan that Sumit Thakur was not present in Nagpur on the day of the incident, and in view of the reference by Shri Devendra Chauhan to the material in the charge-sheet to substantiate the said submission.

8. The condition of bail was that Sumit Thakur shall not enter the city of Nagpur except on dates fixed for trial. I am consciously refraining from making a reference to the material on record on the basis of which the prosecution intends to prove the complicity of Sumit Thakur in the crime. The presence of Sumit Thakur on the spot and the allegation that he used a firearm in an attempt to eliminate the complainant, apart, there is ample material on record to show that Sumit Thakur was present in the city of Nagpur. Illustratively, the

statement of witness Gulsher Khan, who is the father of co-accused Juned, is that Sumit Thakur came to his residence alongwith Pinku Tiwari and four to five others on 26-6-2018. Gulsher Khan states that when he confronted Sumit Thakur, the response was that Sumit Thakur and others intend to settle an issue concerning Juned's dispute with one Ujji. Gulsher Khan states that after fifteen to twenty minutes, Sumit Thakur and his associates received a telephonic call and everybody rushed from the first floor where they were confabulating, to their vehicles and left. The presence of Sumit Thakur and others on the day of the incident is also spoken of by witness Ashish Tiwari. Notably, police have also recovered the firearm allegedly used in the offence at the behest of Sumit Thakur.

9. Ultimately, it would be for the trial Court to consider whether Sumit Thakur was present at the scene of crime. However, for the purpose of cancellation of bail, there is more than ample material to show that Sumit Thakur breached the conditions of bail and was present in the city of Nagpur on 26-6-2018.

10. The following chart throws light on the criminal antecedents of Sumit Thakur.

Police Station	Offences
Gittikhadan, Nagpur	Crime 85/2008, Section 394 r/w Section 34 of the IPC,

	Crime 79/2010, Sections 324, 504 and 506-II r/w Section 34 of IPC
	Crime 189/2010, Sections 147, 148, 149 and 307 of the IPC r/w Sections 4 and 25 of the Arms Act.
	Crime 3081/2011, Sections 3, 25 and 4, 25 of the Arms Act r/w Section 135 of the Maharashtra Police Act.
	Crime 3659/2013, Sections 4 and 25 of the Arms Act r/w Section 135 of the Maharashtra Police Act.
	Crime 3660/2013, Sections 4 and 5 of the Maharashtra Prevention of Gambling Act.
	Crime 363/2013, Sections 364, 504, 506-II r/w Section 34 of the IPC and Section 3 of the MCOC Act.
	Crime 451/2015, Sections 143, 147, 149, 427, 323, 506-II, 504 and 279 of the PIC, Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Section 3(1) of the MCOC Act.
	Crime 456/2015, Sections 435, 120-B r/w Section 34 of the IPC
	Crime 4257/2015, Sections 294, 504, 506-II r/w Section 34 of the IPC.
	Crime 288/2018, Sections 307, 143, 147, 148, 149 of the IPC, Sections 3 and 25 of the Arms Act and Section 3 of the MCOC Act.
Ambazari, Nagpur	Crime 227/2005, Sections 143, 147, 341, 323 and 506 of the IPC.
	Crime 236/2008, Section 324 r/w Section 34 of the IPC.
	Crime 258/2008, Sections 143, 147, 148, 149, 395 and 427 of the IPC.

Tahsil, Nagpur	Crime 109/2010, Section 307 r/w 34 of the IPC, Sections 3 and 25 of the Arms Act.
Jaripatka, Nagpur	Crime 01/2007, Sections 143, 147, 148, 149, 504, 323, 324, 325, 427 of the IPC.
	Crime 145/2011, Sections 147, 148, 149, 302 and 201 of the IPC.
	Crime 199/2014, Sections 363, 395 and 506-II of the IPC.
Sadar, Nagpur	Crime 199/2014, Sections 363, 395 and 506-II of the IPC
Koradi	Crime 01/2007, Sections 143, 147, 148, 149, 504, 323, 324, 325 and 427 of the IPC
Ganeshpeth, Nagpur	Crime 57/2018, Section 188 of the IPC
Yashodhara, Nagpur	Crime 3194/2016, Sections 4 and 25 of the Arms Act.

11. Sumit Thakur poses a veritable danger to the peace, tranquility and physical safety of the law abiding citizenry, not only due to the propensity to indulge in criminal activities, but further in view of the brazen defiance of the judicial process of which the breach of the bail conditions is but a manifestation.

12. Sumit Thakur does not deserve the liberty bestowed by this Court vide order dated 02-5-2018. The indulgence shown by this Court in restoring the bail which was cancelled for breach of the conditions of bail was under the misplaced trust that Sumit Thakur was serious in the unconditional apology and the

undertaking. Evidently, the intent of Sumit Thakur was to take this Court for a ride.

13. The application is allowed.

14. The bail granted to Sumit Thakur vide order dated 02-5-2018 is cancelled.

15. The Police Station Officer, Gittikhadan, Nagpur shall ensure that Sumit Thakur is arrested and produced before the jurisdictional Court within forty-eight hours.

JUDGE

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