

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

CRIMINAL APPLICATION (BA) NO. 1058 Of 2019

Ashish Shivkumar Wankhade .Vs. State of Maharashtra, through Sub
Divisional Police Officer, Division-City, Akola and another

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

Court's or Judge's orders.

Mr. P.V. Navlani, Advocate for applicant.
Mr.N.B. Jawade, A.P.P. for non applicants-State.

CORAM : V. M. DESHPANDE, J.
DATED : FEBRUARY 04, 2020

This is an application for regular bail.

2. For considering this application it would be useful to give background as to why the applicant is before this Court by this bail application.

3. Initially the applicant was arrested in connection with Crime No.384/2017 registered with Police Station, Old City, Akola for an offence punishable under Sections 143, 147, 148, 149, 294, 307, 324 of the Indian Penal Code (IPC) read with Section 7 of the Criminal Amendment Act and under Sections 4 and 25 of the Arms Act.

4. After his arrest on 16.01.2018 the learned Sessions Judge, before whom the bail application was filed, granted the application and released the applicant on bail.

5. Subsequent to his release on 11.06.2018 final report was filed. In the meanwhile, the provisions of the MCOC Act were invoked after previous sanction of the sanctioning authority and the provisions of Sections 3(1)(i)(ii)(2)(4) of the MCOC Act were made applicable. Thereafter, the investigating agency moved an application before the Special Court (MCOCA), Amravati for cancellation of bail granted on earlier occasion. The learned Court below thereafter passed an order on 18.05.2019 thereby bail granted in favour of the applicant before invocation of stringent provision was cancelled and consequently the applicant was taken in custody. Since then the applicant is in jail. In the interregnum, the order of cancellation of bail was questioned before this Court and stay was operating in favour of the applicant. On 09.05.2019, additional charge-sheet was also filed.

6. Thereafter, in Special (MCOCA) C.No.100/2018 the applicant moved an application for bail below Exhibit 92 and the said application was rejected on 03.10.2019. Consequent upon the said, present application is filed.

7. Heard Mr. P.V. Navlani, learned counsel for the applicant and Mr. N.B. Jawade, learned Additional Public Prosecutor for the non applicants-State.

8. It is the submission of the learned counsel for the applicant that in view of Section 21(4)(b) of the MCOC Act the applicant is entitled to be released on bail inasmuch as according to his submission if the entire charge-sheet is perused there is a reasonable ground that applicant is not guilty of offence in question.

9. *Per contra*, it is submission of the learned Additional Public Prosecutor, who opposed the bail on the ground that about 16 offences are still pending against the applicant and he is leader of the crime syndicate. He submits that therefore application deserves to be dismissed.

10. There is no dispute before this Court that for the incident dated 14.12.2017, two separate crimes were registered. First in time is Crime No.383/2017 which is registered on the basis of oral report of one Rahul Khadnas for the offence punishable under Sections 143, 147, 148, 149, 302, 307, 324, 504 of the IPC and another crime is, Crime No.384/2017 for the offence punishable under Sections 143, 146, 147, 148, 149, 307, 324, 294 of the IPC read with Section 7 of the Criminal Amendment Act and under Sections 4 and 25 of the Arms Act.

11. The applicant is arrested in connection with second crime i.e. Crime No.384/2017. The Crime No.384/2017 was registered in view of oral report lodged by Tushar Nagalkar. This Tushar Nagalkar is one of the accused in Crime No.383/2017. Deceased in Crime No.383/2017 is one Shailesh Adhau, who was joined as accused no.3 in Crime No.384/2017.

12. There is no dispute that 16 offences are registered against the applicant along with other members of the crime syndicate who are also the co-accused in Crime No.384/2017. It is also not in dispute that all co-accused are released on bail even after invocation of MCOC Act and their such release on bail is not questioned before this Court by the prosecuting agency.

13. On scrutiny of the FIR lodged by Tushar dated 14.12.2017, though there is presence of the applicant holding iron pipe is stated, no overt act is attributed to the applicant that he assaulted on anybody. As per the FIR, Tushar was assaulted by Rahul Khadsan by fighter. This Rahul Khadsan is first informant in Crime No.383/2017. From the submission of the learned Additional Public Prosecutor it is clear that Rahul Khadsan is also the member of crime syndicate of which it is alleged that

the applicant is a gang leader. This Rahul is released on bail as observed in preceding part of this order. The charge-sheet would show that on 14.02.2017 itself the statement of first informant Tushar was recorded by the investigating officer under Section 161 of the Code of Criminal Procedure (Cr.P.C.). His said statement would show that the applicant assaulted on one Sachin Nagalkar only. Thus, the role of the applicant is surfaced in said statement of Tushar to the extent that he assaulted on Sachin Nagalkar by iron pipe. Statement of Sachin Nagalkar is recorded after two days i.e. on 16.12.2017. His statement did show that the applicant assaulted on him by iron pipe. Curiously neither Tushar nor Sachin state in their statements, on which part of the body of Sachin the applicant gave blow of iron pipe. The entire charge-sheet as placed before this Court by both the learned counsel, does not show that it contain the injury certificate of Sachin Nagalkar. Page 67 of the application, which is part and parcel of the charge-sheet is a prescription of Dr. Gaurav Gomase, a medical officer of Government Medical College and Hospital, Akola in respect of Sachin Nagalkar. On perusal of the said would show that on 14.12.2017 when was examined the chief complaints which he made before the doctor is "burning stomach pain epigastric tenderness present." Thereafter, the medical officer prescribed some medicine i.e.

antacid, Plyvitamin Tab, Paracetamol and Oral Rehydration Salt (W.H.O.). The learned Additional Public Prosecutor could not point out anything before this Court that there was any external injury on any part of body of Sachin Nagalkar, who according to prosecution assaulted by the applicant. Except statement of Sachin Nagalkar there is no other material, at least prima facie to show that the applicant assaulted on any other prosecution witnesses.

14. It is also disclosed to this Court that though charge is framed as on today no witness is examined by the prosecution.

15. In the backdrop of the aforesaid discussion, I am of the view that the applicant can be released on bail by imposing certain conditions. Consequently, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant-Ashish Shivkumar Wankhade be released on bail in connection with Crime No.384/2017 registered with Police Station, Old City, Akola for an offence punishable under Sections 143, 147, 148, 149, 294, 307, 324 of the Indian Penal Code read with Section 7 of the Criminal Amendment Act and under Sections 4 and 25 of the

Arms Act., on he executing P.R. bond in the sum of ₹1,00,000/- (Rupees One Lakh Only) with two solvent sureties in the like amount.

(iii) The applicant shall not enter in the territorial jurisdiction of Akola district, until culmination of trial.

(iv) It is made clear that applicant will be entitled to enter in Akola City only to attend his ongoing criminal cases at Criminal Court at Akola and for such attendance he need not obtain prior permission from the MCOCA Court.

(v) At the time of executing bail bond before the Court below applicant shall furnish his residential address where he will be residing after bail and also furnish his cell phone number.

(vi) The learned Judge before whom bail bond will be executed shall issue necessary directions to the applicant to attend nearest police station at least once in a week i.e. on every Tuesday and shall be in the said police station from 10:00 a.m. to 02:00 p.m., until culmination of the trial.

(vii) The applicant is directed not to leave the jurisdiction of the trial Court i.e. Special Court (MCOCA) without prior permission of the said Court, except as observed in Clause (iv) of this order.

(viii) Applicant shall not commit any offence whatsoever in nature after his release on bail.

(ix) The applicant is directed to remain present before the trial Court on each and every dates.

(x) If it is noticed by the prosecuting agency that any of the conditions is breached, it shall be open for the prosecuting agency to file application for cancellation of bail.

The application is disposed of.

JUDGE