

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.21 OF 2021

NAGESH S/O MUKUNDA PINGLE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. H. F. Pawar, Advocate for applicant.
Mr. S. Y. Mahajan, APP for the respondent – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 4th March, 2021
Pronounced on : 18th March, 2021

ORDER :-

. Present applicant has been arrested on 01.09.2020 in connection with Crime No.81 of 2020 registered with Jilla Peth Police Station, District Jalgaon for the offences punishable under Sections 353, 307, 120(B), 224, 225, 201 of Indian Penal Code and Section 3/25 of the Indian Arms Act. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. H. F. Pawar for the applicant and learned APP Mr. S. Y. Mahajan for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been posed as original accused No.6 and, in fact,

though so many Sections have been invoked, the role of this applicant is limited to allegedly providing pistol round from some unknown person on the say of accused Nos.1 and 2 and to provide it to accused No.4, who was then lodged at that time in the Central Prison, Jalgaon. So also, on the say of applicant Nos.1 and 2, with the help of accused No.8 to provide mobile sim card which was in the name of the applicant to accused No.9. The charge-sheet is now filed and it appears that the present applicant's name has been discovered by accused No.4 in his memorandum under Section 27 of the Indian Evidence Act. The said piece of evidence is absolutely not admissible in nature. Therefore, there is no direct or indirect evidence against the present applicant. Further, accused No.8 - Sagar @ Kamlakar Subhash Patil has been released by this Court on regular bail on 16.12.2020 and, therefore, on the ground of parity also, the present applicant deserves to be released on bail. Accused No.9 - Chetan @ Maya Anil Bhalerao has been released on bail by the learned Additional Sessions Judge, Jalgaon on 30.01.2021.

4. Per contra, learned APP strongly opposed the application and submitted that one of the serious crime has been committed with the conspiracy of all the accused persons. The FIR has been lodged by the guard at the Central Jail, Jalgaon. The guard was threatened by the

under trial prisoners at the gunpoint and by taking the keys of the jail, accused Nos.1 to 3 i.e. Sagar Sanjay Patil, Gaurav Vijay Patil and Sushil Ashok Magre have fled. It was the country made pistol which was shown to the guard and it has been provided by the present applicant. He has been identified in the CCTV footage of the prison. So also, his name came to be disclosed by accused No.4 – Jagdish Pundlik Patil. After the applicant was arrested, he has also given memorandum, wherein it is stated by him that he had taken sim card from one Divya mobile shop and got it activated by giving his documents. That sim card was sealed in a face powder box and by taking the motorcycle of accused No.9 Chetan, it was thrown inside the Central Jail over the wall. Further, the present applicant is the person, who had provided the said country made pistol to one Gaurav Patil i.e. accused No.2. Thus, he has done the active part for accused Nos.1 to 3 to flee away from the jail and, therefore, he deserve no sympathy.

5. After going through the entire charge-sheet, it can be seen that the FIR was mainly against accused Nos.1 to 3, who were the under trials and by showing country made pistol and forcibly taking keys of the jail, they had fled away. Now, it can be seen that those three accused persons were under trial prisoners and, therefore, unless they would have been provided with the country made pistol, they could not have

done the further act. The CCTV footage panchanama shows presence of four persons fleeing on motorcycle and they have been identified as accused Nos.1 to 4. That CCTV footage is in respect of the date of the incident i.e. 25.07.2020. Thereafter, it appears that accused No.4 came to be arrested on 24.08.2020 and he has given memorandum in which he has stated that present applicant would give a parcel to him and the said parcel was also supposed to be thrown from the wall of the jail. He states that he was given understanding that the said parcel would be containing pistol. Thus, the role of the present applicant is stated to be discovered after the said statement under Section 27 of the Indian Evidence Act. The admissibility of the same will have to be decided by the learned trial Judge. Further, it appears that accused No.1 - Sagar Sanjay Patil was also arrested on 28.08.2020 and he has discovered a country made pistol, which was allegedly shown to the guard for forcibly taking the keys by accused Nos.1 to 3. Thereafter, the present applicant came to be arrested on 01.09.2020. It can be seen from the prosecution story that the sim card was made available by the present applicant by giving the documents in his name. He got the said sim card activated and it is stated that it was sent in jail in a powder box by throwing that box from the wall of the jail. Thereafter, accused Nos.1 and 2 had contacted accused No.4 to make the arrangement for the

pistol. As regards the role of accused Nos.8 and 9 is concerned, on the ground of whose release on bail the present applicant is seeking parity, it is stated that applicant No.8 was along with the present applicant when the powder box containing sim card was thrown inside the jail. However, the act of the present applicant is not limited to that only. He had procured the said sim card, which has been then allegedly utilized by accused Nos.1 and 2 to contact accused No.4. Further, the motorcycle of accused No.8 is stated to have been utilized to go up to Central Jail and it appears that accused No.9 was also present along with them at that time. That means, the role of accused Nos.8 and 9 is limited to throwing the sim card inside the jail, however, as regards the present applicant is concerned, at the cost of repetition, he has taken that sim card in his name and made it activated with the knowledge and then it is also stated that on the another occasion, he has taken the pistol from an unknown person and given it to accused No.4, who is then seen in the CCTV footage with accused Nos.1 to 4, when they fled away. Therefore, the release of accused Nos.8 and 9 on regular bail cannot give a ground of parity for the present applicant. His role is different, serious and more active than the other two persons. When it is alleged that he has helped accused Nos.1 to 3 by providing the pistol which they had used to give threat to the guard and to flee them away from jail,

then for such serious offence, taking into consideration the role attributed to the present applicant, he does not deserve to be released on bail. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm