

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.50 OF 2021

Mahendra @ Balu Bhagwan More ... **APPLICANT**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Shri S.P. Brahme, Advocate for applicant
Shri K.B. Jadhavar, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 29th June, 2021

Date of pronouncing order : 7th July, 2021

ORDER :

The challenge in this revision application is to the order dated 11/1/2018, passed by Additional Sessions Judge, Jalgaon below application Exh.7 in Sessions Case No.48/2017. By the impugned order, the application preferred by the applicant/ accused for discharge, came to be rejected.

2. Heard learned counsel for the applicant. Perused the relevant police papers.

3. Mr. S.P. Brahme, learned counsel for the applicant would submit that, there is no material to connect the applicant/ accused with the offence in question. He has been implicated simply on the basis of suspicion. CCTV footage of the happening at the hotel was very much available. The investigating officer has not collected the same. The Trial Court ought to have examined the CCTV footage. The Call Data Record (CDR) would not take the prosecution case further. The co-accused were staying in the hotel on their own. One of them is relative of the applicant. The learned counsel, therefore, urged for grant of the application and discharge of the applicant from the Sessions Case.

4. The learned A.P.P. would, on the other hand, submit that, there is material to indicate the applicant's prima facie involvement in the offence in question. Nothing more is required to be seen at this stage. he took me through the relevant material relied on by the prosecution in support of its case against the applicant/ accused. The learned A.P.P. supported the impugned order.

5. Chapter XVIII of the Code of Criminal Procedure speaks of trial before the Court of Sessions. Section 227

thereof reads thus :

"227. Discharge :- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so."

6. In (2008) 10 SCC 394 [Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra], the Hon'ble Supreme Court held :-

"It is trite that the words "not sufficient ground for proceeding against the accused" appearing in Section 227 Cr.P.C. postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is

whether the materials on record, if unrebutted, make a conviction reasonably possible.”

7. The applicant/ accused is sought to be prosecuted for the offence punishable under Section 216-A of the Indian Penal Code. The Section reads thus :

"216-A. Penalty for harbouring robbers or dacoits :- Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

8. Section 52-A of the Indian Penal Code defines the term 'harbour'. It reads as under :

52-A. “Harbour” :- Except in Section 157, and in Section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in his Section or not, to evade apprehension.”

9. The prosecution has, therefore, to prima facie show the applicant/ accused to have supplied accused Nos.1 to 10 or anyone of them with shelter, food, drink, money, clothes or ammunition, or assisted them by any means, with a view to evade their arrest/ apprehension. The prosecution is also required to prima facie show that the applicant/ accused knew or had reason to believe that the co-accused were about to commit robbery or dacoity and he assisted them or any of them with the intention of facilitating the commission of such robbery or dacoity or screening them or any one of them from punishment.

10. The First Information Report (F.I.R.) has been lodged by Police Sub Inspector, Chalisgaon City Police Station on 28/11/2016. It has been alleged in the F.I.R. that, on 28/11/2016, counting of votes of the Municipal Council elections was scheduled. The informant was on bandhobast duty. A secret information was received that 10 persons had been staying in Room Nos.101 and 116 of Hotel Bridge Corner. They had been camping there with a view to commit a robbery/ dacoity in the city of Chalisgaon. The Assistant Police Inspector along with some of the police staff including the informant effected raid on the hotel. Before effecting the

raid, the raiding party overheard the talk of the occupants of Room No.1. The talk was in relation to committing dacoity. During the raid, accused Nos.1 to 10 obstructed the raiding party in discharge of their duty. They, however, could be overpowered. One of them was found with a loaded countrymade revolver. The other one was found with a knife. A pack of chilly powder was found with third one. In the cupboard of the room, an iron rod and a rope was found. Based on the F.I.R., a crime for the offence punishable under Sections 399, 402, 353, 332 of the Indian Penal Code and Sections 3/25, 27 of the Arms Act came to be registered against accused Nos.1 to 10.

11. The applicant is accused No.12 in the case. According to the prosecution, it was found during investigation that accused Nos.1 to 10 had been camping in the hotel at the behest of the applicant/ accused. In the check-in register of the hotel, entry of occupation of accused Nos.1 to 10 had not been made. Lodging and Boarding charges were to be paid by the applicant/ accused. The CDR record indicates that, one of the accused had been in constant contact with the applicant/ accused.

12. To prima facie connect the applicant/ accused with the offence punishable under Section 216-A of the Indian Penal Code, the prosecution relies on the CDR and the statements of Ajay Sahebrao More and Dr. Sachin Madhukar Nikumbh.

13. Ajay More was serving as a Room Boy with Hotel Bridge Corner. It is in his statement that, on 27/11/2016, he reported on duty by 9.30 in the morning. Two persons came to the hotel at 3.30 p.m. They were allotted Room No.106. He asked them to submit some proof of their identity. They agreed to give the same after they get fresh. Both of them, however, did not give any document in proof of their identity. He (Ajay) again asked them for the same. Both of them, however, told Ajay that they were guests of Balu More (applicant herein). Meanwhile, other companions of those two came. Sagar Wagh allotted them Room no.106. All of them were served with meals. Since Balu More was to pay the bill, he (Ajay) retained the bill of meals with him.

14. The Room Boy Ajay More, in his statement, did not say that the applicant herein had ever called him or the Manager and asked for arranging two rooms for the accused Nos.1 to 10. He also did not state the applicants to have had

informed him not to charge the accused Nos.1 to 10 for stay and/or meals and it would be he who would pay for the same. As such, the statement of Ajay More even does not slightly lead me to infer that accused Nos.1 to 10 had been camping in the hotel at the instance of the applicant herein.

15. Then there is statement of Dr. Sachin Nikumbh, the owner of the hotel. His statement does not take us any further since whatever has been stated in his statement was all based on what was told to him by Ajay More and Sagar Wagh. Statement of Sagar Wagh is not recorded. Then there remains CDR. True, the applicant was found in constant contact with accused No.4 Vishal Salve. Based on the CDR and statement of Ajay More, it is just difficult to observe that the applicant/ accused had knowledge or reason to believe that the accused Nos.1 to 10 were about to commit robbery/ dacoity and he has harboured them with the intention of facilitating the commission of such robbery/ dacoity.

16. In my view, the aforesaid material is grossly inadequate to connect the applicant/ accused with the offence (Section 216-A of the Indian Penal Code) with which he is sought to be charged. The learned Additional Sessions Judge did not give cogent reasons in support of the impugned order.

Interference is, therefore, warranted with the order challenged in this revision application. The revision application, therefore, succeeds. The same is allowed in terms of prayer clause (C). The applicant is discharged from Sessions Case No.48/2017.

**(R. G. AVACHAT)
JUDGE**

fmp/-