

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.750 OF 2021

Utkarsh Patil	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. M.K. Kocharekar, Advocate for the Applicant.
Mr. S.H. Yadav, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th FEBRUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.53/2021 registered at Yerwada police station, Pune City on 26.1.2021 under Sections 307, 224 and 353 of the Indian Penal Code. The Applicant is arrested on 28.1.2021 and since then he is in custody.

2. Heard Shri. M.K. Kocharekar, learned counsel for the Applicant and Shri S.H. Yadav, learned APP for the State.

3. Before advertng to the allegations in the FIR, it is necessary to mention the history as submitted by Shri

Kocharekar, learned Counsel for the Applicant.

4. The Applicant was an accused in a case under Section 138 of Negotiable Instruments Act pending in the Court of Judicial Magistrate, First Class at Port Blair, South Andaman. A warrant came to be issued against him on 6.1.2021. That warrant was directed to the Joint Commissioner of Police (Pune) for execution by the said Court.

5. In execution of that warrant, the Pune Police wanted to arrest the Applicant. In the night between 25th and 26th January, 2021, the Applicant was apprehended but was not put under formal arrest as certain formalities were required to be completed including his medical examination and COVID-19 test. In this background, the averments in the FIR are necessary to be referred to.

6. It is mentioned in the FIR lodged by one Vinayak Mudholkar, who was a police constable attached to Yerwada Police Station. He has stated that the Applicant was kept in a

detection branch room of Yerwada police station in the night. At around, 2:00 a.m., he complained that because of earlier accident, he was having pain in his hand. Therefore, he was allowed to go near his car for taking warm air on his hand from the heater of the car. It is alleged in the FIR that the Applicant took advantage of this, he took his vehicle which was parked outside. He started it and tried to go away. While driving, he drove the car rashly and it was almost taken on the first informant. He jumped and saved his life. The Applicant went away in his vehicle. He was not found and, therefore, this FIR is lodged.

7. Shri Kocharekar submitted that, at this stage, it is not disputed that the Applicant had gone to the police station but he was not put under arrest and, therefore, he left from that place. He immediately went to Mumbai, got a flight to Port Blair and went to the Court that had issued the warrant against him and got the warrant cancelled. A copy of the order showing cancellation of warrant of arrest is annexed at Exhibit-B to this Application. This recall of warrant of arrest

order was passed on 28.1.2021. After that the Applicant again got a flight to return to Mumbai. As soon as he landed in Mumbai, he was arrested by the police in connection with the offence which is subject matter of this application.

8. Shri Kocharekar submitted that the Applicant had no intention to disobey law. His subsequent conduct shows that he had gone to the Court and got his warrant cancelled. He had followed the procedure. The allegations in the FIR are exaggerated. He was not put under arrest and, therefore, it cannot be said that he escaped from custody.

9. Shri Kocharekar lastly submitted that the Applicant's wife had delivered two premature babies i.e. twins on 11.2.2021 and the Applicant's wife and two babies require his help. The babies are at present kept in Neonatal Intensive Care Unit [NICU]. He, therefore, submitted that on humanitarian grounds, at least the Applicant deserves leniency.

10. Learned A.P.P. opposed this Application. He

submitted that though the Applicant was not formally arrested, he was under the control of the police and that means he was in deemed custody. Therefore, the Applicant should not have escaped from their custody. He submitted that the first informant has suffered knee injury. Therefore, the offence is true and leniency should not be shown to the Applicant.

11. I have considered these submissions. While it is true that the Applicant should not have gone away from the police station in the manner in which it is alleged in the FIR. He could have taken better recourse to getting the warrant cancelled. However, the subsequent events do indicate that the Applicant had gone to the concerned Court in Port Blair and had got the warrant cancelled against him. That was the genesis of the incident, which resulted in lodging of this FIR against him by Yerwada Police for the offence under Section 307 of IPC.

12. The Applicant has allegedly driven his car rashly, which could have caused damage to the informant. But even

as per the FIR besides minor injuries as he jumped out of the way, the informant did not suffer any serious injury. The main reason for all these incidents was about the Applicant's presence in the Court at Port Blair. That cause, as of today, does not survive. The subsequent offshoot for that incident has resulted into the Applicant being arrested and as of now is being detained in custody.

13. In this backdrop, the Applicant's case can be decided on humanitarian ground because his wife has delivered premature twins on 11.2.2021 through the cesarean procedure. The Applicant's presence is more required in their support. His further custody at present in jail will not serve any purpose. The Applicant after his arrest was immediately granted judicial custody. He was not even remanded to police custody. In this view of the matter his continued custody in this case is not really necessary. He can be granted bail in this case. Learned A.P.P. states that the Applicant has not given his correct address. This can be taken care of by imposing certain condition. Hence, the following order :

ORDER

- (i) In connection with C.R.No.53/2021 registered at Yerwada police station, Pune City, the Applicant is directed to be released on bail on his furnishing a PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Considering the humanitarian ground mentioned above, initially the Applicant is permitted to furnish cash bail for the same amount. The Applicant will have to furnish the sureties, as directed, within a period of one month from today.
- (iii) The Applicant shall give his correct residential address before being released and he shall be released only after verification of that address.
- (iv) The Application stands disposed of accordingly.

Digitally
signed by
Pradeepkumar
P. Deshmane
Date:
2021.02.17
18:52:14
+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)