

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1069 OF 2021

AMAR BHIMSING RAJPUT)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Satyavrat Joshi, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 30th NOVEMBER 2021

PRONOUNCED ON : 14th DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.20 of 2020 registered with Police Station Jaisingpur, Kolhapur, for offences punishable under Section 302, 307, 201, 212, 364, 120-B, 143, 147, 148, 149, 504, 506(2) of the Indian

AVK

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Penal Code (IPC), Section 4(25) of the Arms Act and Sections 3(1)(i), 3(1)(ii), 3(2), 3(4), 3(5) and 21 of the Maharashtra Control of Organized Crimes Act (MCOC Act).

2 The prosecution story, in short, is that informant along with his friend Nursing Murti were working as drivers of Containers of A.M.Transport situated at Nilmangla, District – Bengluru. Accused Shaikh Zuber Ahmed (A-3) is their employer. On 18th January 2020, at about 2.30 p.m., informant and said Nursing Murti left for Athani by taking container bearing no.KA-52-A-9870 loaded with 150 bags of Vimal Gutkha and reached there at about 2.00 a.m. on 19th January 2020. In the early morning both of them found that 53 bags of Vimal Gutkha were missing and accordingly the informant apprised this fact to accused Shaikh Zuber Ahmed.

3 According to prosecution, at about 10.00 a.m., accused Shaikh Zuber Ahmed along with accused Imran Altaf Pasha (A-4), Ashraf Ali Usman Ali (A-5) and Sajid Patni (A-6)

came and started blaming the informant and said Nursing Murti to be the thieves. They were also beaten by means of wooden logs. The prosecution alleges that the said accused then took informant and Nursing Murti to Miraj in a newly constructed building and tied their hands and legs with chair. Another 4 to 5 persons arrived and started beating them severely by means of wooden logs, belt and hockey sticks. From there they were again taken to Dhanoli and there also they were again beaten.

4 According to prosecution when the informant informed accused about Nursing Murti having spoken to one Arjun prior to the theft, said Arjun was called and asked to reach Dhanoli along with father of the informant. After their arrival all the abovestated persons and other 5 to 6 unknown persons started beating Arjun by wooden sticks and knives. Because of severe beating, Arjun died. It is further alleged that accused asked Nursing Murti to take the blame upon him for which they would give him Rs.2 lacs. The informant, accordingly, lodged the report.

5 Mr.Satyavrat Joshi, learned counsel for the applicant, submits that the name of applicant is nowhere revealed in the First Information Report (FIR). It is only when supplementary statement of the informant came to be recorded on 1st July 2020 and on showing photograph of the applicant, he was made an accused. The learned counsel also invited my attention to statement of witnesses and impressed upon me how those statements are not reliable. According to the learned counsel, except the confessional statement of co-accused and discovery of sticks at the instance of applicant, there is no other independent evidence to show involvement of applicant in the offence. Investigation is completed and charge-sheet has been filed. In such circumstances, the applicant may be enlarged on bail, argued learned counsel.

6 Smt.Anamika Malhotra, learned APP, on the other hand, opposed the submissions by contending that the confessional statement of co-accused clearly implicates the applicant. The learned APP also invited my attention to the

Affidavit-in-Reply given by the Investigating Officer and submitted that the offence being of serious nature, the applicant should not be enlarged on bail.

7 Perused the investigation papers. I have also gone through the Affidavit-in-Reply of the Investigating Officer.

8 Admittedly, the FIR dated 22nd January 2020 does not reveal the name of the applicant. It is only on 1st July 2020 when the supplementary statement of the informant was recorded and he was shown the photograph of applicant, the informant recognized him as the person who had beaten them by means of stick. This supplementary statement does not inspire confidence for two reasons. Firstly, it was recorded after more than 6 months of the filing of the FIR and, secondly, in the supplementary statement, the informant gave a general statement that the applicant had beaten them by means of stick. He does not say as to who were beaten by him by means of a stick.

9 Next statement is that of Atif Mustaf recorded on 31st January 2020 i.e. after the incident. It appears that this witness was also shown the photograph and after seeing the photograph, he stated that he knows one of them i.e. the applicant and further told police that on 23rd January 2020, the applicant along with two other persons shown in the photograph had visited his lodge. Except that, there is nothing. This statement does not, in any manner, further the case of prosecution.

10 Now I come to the statement of Nursing Murti i.e. the injured which was recorded on 22nd January 2020. However, this witness had not named the applicant. Again his supplementary statement was recorded on 29th June 2020. It appears that he was also shown the photographs of some persons and he recognized the applicant as the person who had assaulted him and Arjun by means of a base ball stick.

11 Interestingly, on the same day, statement of said Nursing Murti under Section 164 of the Cr.PC. was recorded by

learned Judicial Magistrate First Class, Jaisinghpur, but in that statement he nowhere revealed the role of the applicant.

12 The only incriminating evidence that appears to be against the applicant is his disclosure statement given under Section 27 of the Indian Evidence Act, pursuant to which a base ball stick came to be seized.

13 On the other hand, the prosecution has laid much emphasis on the confessional statement of accused Abhinandan @ Abhya Rajkumar Patil Dhadel and others who had given the name of applicant. As far as confessional statements are concerned, the evidentiary value thereof is for the trial Court to be looked into. Admittedly, there are no criminal antecedents against the applicant except the present crime number. Therefore, the bar of Section 21(4) of the MCOC Act shall not be applicable to the case of the applicant.

14 Having regard to the above material, in my considered opinion, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Amar Bhimsing Rajput shall be released on bail in Crime No.20 of 2020 registered with Police Station Jaisingpur, Kolhapur, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) The applicant shall not enter the jurisdiction of the concerned Police Station.
- (v) Bail before the trial Court.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)