

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

CRIMINAL APPLICATION (BA) NO. 90 OF 2021.

Gajanan Devidas Chinchole.

..versus..

State of Maharashtra

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

Court's or Judge's orders

Shri C.S. Kaptan, Senior Advocate with Shri S.A. Tiwari,
Advocate for the Applicant.

Shri Anil Mardikar, Senior Advocate with Shri V.B. Bhise,
Advocate for the Complainant/Assisting prosecution.

Shri M. Khan, A.P.P. for the Non-applicant - State.

CORAM : VINAY JOSHI, J.

DATE : JUNE 22, 2021

Hearing was conducted through Video Conferencing.

2. The applicant came to be arrested by Akot City Police Station, District Akola in connection with Crime No.80/2020 for offence punishable under Sections 302, 120, 120B, 201 read with Section 34 of the Indian Penal Code, Sections 3/25, 5/27 and 7/27 of the Arms Act, 1959 and Section 47/177, 130[1][2], 177, 3/1981 of the Motor Vehicles Act, 1988.

3. Primely it has been canvassed that there is

absolutely no material connecting the present applicant with the crime. It is submitted that the main allegations are against the co-accused namely Alpesh and Shyam, who allegedly committed murder of deceased Tushar Pundkar at the instance of co-accused Pawan.

4. As against this the non-applicant State submitted that the applicant was a part of larger conspiracy in committing murder of Tushar. Reply affidavit has been filed stating that the applicant has played a vital role in procuring fire arm along with the co-accused, by which Tushar was done to death.

5. Shri Mardikar, learned Senior Counsel assisting prosecution has reminded the settled position that there cannot be direct evidence of conspiracy, but, it has to be inferred from the various circumstances. He has also pointed out towards seriousness of the offence, and prayed for rejection of bail.

6. Shri Kaptan, learned Senior Counsel would submit that despite statements of witnesses Nihal Singh, Prashant Nathe and Vipul Mhaisne, there is no reference of applicant in the entire bulky charge sheet.

7. Perusal of police paper indicates that the co-accused Pawan Sedani hired the co-accused Alpesh and

Shyam for committing murder of Tushar. In order to execute the plan, the co-accused Alpesh has procured a fire arm from the State of Madhya Pradesh. It is the prosecution case that the applicant accompanied Alpesh while procuring fire arm and thus, he was part of the conspiracy.

8. In the light of said allegation, the statement of Nihal Singh is perused. He is working as servant at a liquor shop at a place called Badwa in Madhya Pradesh. One day co-accused Alpesh along with another co-accused Shyam went to his place and enquired as to where they can buy a fire arm. On enquiry this witness has asked co-accused Alpesh to contact Subhan Jat where possibly they can get fire arm. It is his statement that after 4-5 days, Alpesh came, procured the weapon and while returning, informed that he got the weapon, and at that time the applicant had accompanied Alpesh. The other statement says that the applicant was also with Alpesh when on earlier visit enquiry about weapon was made. This is the only material against the applicant.

9. It is a matter of trial to establish that the applicant had conspired with Alpesh to commit murder and as a part of conspiracy, he went with Alpesh to fetch

the weapon. In order to establish a charge of criminal conspiracy, the prosecution must prove an agreement between two or more persons to do an illegal act. Prima facie besides mere occasional association of the applicant with one of the co-accused, no other material emerges to draw an inference in that regard. The prosecution was not able to point out any material to show that the applicant was knowing that the weapon was procured for committing murder of Tushar. I do not wish to make further comments which may be prejudicial to the interest of either side at the time of trial. Suffice to say that the existing material is totally inadequate to detain the applicant, that too after filing of the charge sheet. In view of that following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant/accused Gunjan Devidas Chinhole is released on bail in connection Crime No.80/2020 registered with Akot City Police Station, District Akola for offence punishable under Sections 302, 120, 120B, 201 read with Section 34 of the Indian Penal Code, Sections 3/25, 5/27 and 7/27 of the Arms Act, 1959 and Section 47/177, 130[1][2], 177, 3/1981 of the

Motor Vehicles Act, 1988 on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

- (iii) The applicant shall attend the concerned Police Station on every alternate Monday between 10 a.m. to 12 noon for a period of one year from today.
- (iv) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (v) Misc. Applications, if any, also stands disposed of.

JUDGE

Rgd.