

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (BA) No.146 of 2021

Shubham Hamichand Jat

Vs.

The State of Maharashtra through the P.S.O. Akon (City) Tq. Akot & Dist. Akola

Office notes, Office Memoranda of

Coram, appearances, Court's orders

or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.V. Sirpurkar, Advocate for the Applicant.

Shri M.A. Kadu, APP for the Non-applicant/State.

Shri G.Y. Ghurde, Advocate (Assist to Prosecution).

CORAM : **S.M. MODAK, J.**
RESERVED ON : **28th APRIL, 2021.**
PRONOUNCED ON : **30th APRIL, 2021.**

Heard learned Advocate Shri S.V. Sirpurkar for the applicant, learned APP Shri M.A. Kadu for the non-applicant/State and learned Advocate Shri J.Y. Ghurde who is assisting the prosecution.

02] The present accused could not be arrested when the first charge-sheet was filed on 9th June, 2020. He was shown as an absconding accused. F.I.R. at C.R. No.80/2020 was registered with Akot City Police Station, Akola on 22nd February, 2020. It was registered under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short "IPC") and under Section 3 read with Sections 25 and 27 of the Arms Act, 1959. The F.I.R. was lodged against unknown person. The unknown person has fired bullet on deceased Tushar Pundkar in a police quarter Akot, Taluka Akola on 22nd February, 2020. Whereas on completion of investigation, charge-sheet was filed for the offence punishable under Sections 302, 120-B and 201 read with Section 34 of IPC and under other sections of Arms Act and Motor Vehicles Act, 1988.

03] The deceased Tushar Pundkar was chargesheeted for committing murder of one Tejas Suresh Sedani on 11th September, 2013. Whereas the arrested accused No.1 Pawan Sedani is the cousin brother of the said Tejas. The prosecution alleged a case that accused Tejas has hatched conspiracy along with one Alpesh Dudhe and others to murder deceased Tusar. In that conspiracy, various persons have helped him. Present accused is one of them.

04] Present accused supplied one firearm and live cartridges to arrested accused Alpesh Dudhe and others. Police went to district Sendhava, Madhya Pradesh to arrest present accused, but he could not be arrested. Due to this, the charge-sheet was filed and later on present accused came to be arrested.

05] My attention is drawn towards the limited role played by the applicant and release of co-accused Nikhil Sedani and Shahabaz Khan by this Court. Whereas the allegation of absconding is denied and it is contended that there is no proclamation issued as against this. Learned APP submitted that their statements recorded, which clear cut shows the involvement of this applicant in supplying the prohibited articles. There is also emphasis about place of residence of this applicant outside State of Maharashtra.

06] The Investigating Agency has recorded the statements of Nishantsingh Radheshyamsingh Rajput and Deepak Baliram Khedekar Taluka Badwa, District Khargone, Madhya Pradesh. On their reading, it is disclosed that accused Alpesh Dudhe contacted witness Nishant Singh for procurement of the weapon. Witness Nishant Singh in turn told this fact to witness Deepak Khedekar. Witness Deepak Khedekar gave information to present applicant Shubham resident of village

Piplya, Taluka Maheshwar, District Khargone as he knows one person who can arrange for gun.

07] Accordingly, Alpesh Dudhe and others went to village Piplya. The present applicant along with the accused Alpesh Dudhe and co-accused Shyam Nathe went to one dhaba and returned after half an hour along with gun. This is the allegation against the present applicant. So he was the intermediary in between Alpesh Dudhe and the supplier of the gun. It is not known from whom the accused-present applicant arranged for the gun. This is the only role alleged against this applicant.

08] It is true that the police have applied conspiracy section. In conspiracy, various persons are involved and they are playing different role. If any offence is committed in pursuance to the conspiracy, the persons who have hatched the conspiracy, the persons who have executed the conspiracy and the persons who have assisted in execution of the conspiracy all are liable. In this case, it is the gun who is arranged by this applicant was instrumental in firing on the deceased. Ballistic report is not pointed out to me. Be that as it may, there is no other major role alleged against this applicant.

09] The rule of parity will be applicable. Because, co-accused Nikhil Sedani (Criminal Application (BA) No.376/2020), Shahbaz Khan (Criminal Application (BA) No.1176/2020) are released on bail by this Court. If their bail orders are perused, we can find that role alleged against them is similar to role alleged against this applicant. So, I am inclined to grant him bail.

10] The apprehension of future absconding can be taken care by asking the applicant to furnish security who is having residence of

Nagpur district. Hence the order:-

ORDER

- a) The application is allowed.
- b) Applicant - Shubham Hamichand Jat is released on bail on furnishing personal bond and surety bond of Rs.50,000/- (Rupees Fifty Thousand Only).
- c) The applicant is directed to give surety who is having residence in Nagpur district and property in Nagpur district.
- d) The applicant shall not enter the Taluka Akot until completion of the trial.
- e) The applicant shall not threaten or allure the prosecution witnesses.
- f) The applicant to give attendance to Akot City Police Station on first Thursday of every month in between 12:00 to 2:00 p.m. until completion of the trial.
- g) The Investigating Agency is at liberty to ask for cancellation of bail, if the applicant has breached any of the conditions of this order.

(S.M. Modak J.)