

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

CRIMINAL APPLICATION (BA) NO.261 OF 2021

Raja s/o Mahesh Sandekar

Vs.

State of Maharashtra, through PSO, PS Gondia City, Dist. Gondia.

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

Court's or Judge's orders.

Shri Virat S. Mishra, Advocate for applicant.
Smt. Mrunal A. Barabde, APP for non-applicant /State
Shri Amit Band, Advocate to assist the prosecution.

CORAM : V.M. DESHPANDE, J.

DATE : 29th APRIL, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) Heard Shri Virat Mishra, learned counsel for the applicant and Smt. Mrunal Brabade, learned Additional Public Prosecutor for non-applicant/State. Opportunity was given to Shri Amit Band, learned counsel to file an application to assist the prosecution. He submits that he has filed an application to assist the prosecution however the said application is not before the Court because the said application is still in the dropbox.

(3) Be that as it may, permission is given to Shri Amit Band, learned counsel to assist the learned Additional Public Prosecutor.

(4) This is a regular bail application. The applicant is arrested on 15.02.2020 in connection with Crime No.81 of 2020 registered with Police Station, Gondia (City) for the offence punishable under Sections 143, 148, 149, 302 and 323 of the Indian Penal Code (IPC) and under Sections 3 and 25 of the Arms Act.

(5) It is the submission of Shri Virat Mishra, learned counsel for the applicant that presence of the applicant in jail is not necessary inasmuch as according to him, the investigation is over and the charge-sheet is already filed. His another limb of submissions is that the role attributed to the applicant is very minor inasmuch as the deceased was shot dead by co-accused – Naresh Nagpure and the gun is also recovered from him. He submits that there is no recovery at the behest of the applicant. It is also his submission that co-accused – Narayan Sharma, Mohit, Dhiraj and one Durgesh are already released on bail by the trial Court and applicant's role cannot be differentiated from the role played by them. He, therefore, claims bail on the ground of parity also.

(6) The application is strongly opposed by the learned Additional Public Prosecutor for the State. The reply is also filed on behalf of the prosecution to oppose the application for bail. Learned Additional Public Prosecutor pointed out that the applicant is having criminal background as two offences are registered against him for the offences

punishable under Sections 307 and 120B of the IPC and in one of the crimes stringent provisions of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) are also slapped on him by the prosecution. She, therefore, submits that the application be rejected.

(7) Shri Amit Band, learned counsel for the complainant supported the learned Additional Public Prosecutor.

(8) With the assistance of learned counsel appearing for the respective parties, I have gone through the charge-sheet and also the reply. Though there is no dispute before this Court while considering this application for bail that there are no eye-witnesses in the prosecution case, it appears from the complaint lodged on 14.02.2020 resulting into registration of the crime, in which the applicant is claiming bail that there is an oral dying declaration by deceased-Suresh Yadav to first informant Ku. Kajal.

(9) Report of Ku. Kajal, which is lodged immediately, narrates that on 14.02.2020 at 06:00 p.m. her father deceased-Suresh Yadav went to his agricultural field. When she and her mother were proceeding to their agricultural field that time she noticed that some boys were running away from their agricultural field and she identified out of them as; Naresh Nagpure, Narayan Sharma, Raja Sandekar (present applicant) and 2 to 3 others. Her report further

narrates that when they went to cattle shed of the field, she and her mother found that her father was lying on the ground and on enquiry being made by her with him, he disclosed that co-accused Naresh Nagpure opened gun shot at him and present applicant, Narayan Sharma and 2 to 3 others assaulted by kick and fist blows.

(10) No doubt true that cause of death is due to firearm injury to the heart as per Autopsy Surgeon and it is not prosecution case that the applicant has opened fire. In my view, still the applicant's case will have to be independently examined as to whether he is entitled for bail or not.

(11) The learned Additional Public Prosecutor has pointed out by reading her reply that during the course of the investigation the Investigating Officer has seized CCTV footage of a hotel where conspiracy was hatched to eliminate Suresh Yadav and the applicant was one of the conspirators.

Perusal of the charge-sheet would show that the Investigating Officer has recorded the statement of Naresh Madhavprasad Pande, who is the owner and runs hotel by name 'Sunshine Hotel and Lodge'. His statement would show that at the time of booking of a room, he took entry in the register and also CCTV cameras were installed. His statement shows that applicant-Raja Sandekar along with his friends Naresh Nagpure and his other friends were the

regular visitors of his hotel and therefore he knows them very well. Reading of statement of Naresh Pande, which is recorded during the course of the investigation by the Investigating Officer, would show that on 14.02.2020 (date of the incident itself) at 02:00 p.m., applicant-Raja Sandekar along with his lover came and stayed in the lodge by booking a room. It is also stated that the other co-accused persons also came there. It is also his statement that the CCTV footage is recovered by the investigating agency.

(12) Meeting of minds and execution of plan is dated 14.02.2020 and they are in very close proximity of time.

(13) It is worth to be recorded in this order that previously the applicant was arrested in a crime for the offence punishable under Section 307 of the IPC. He was released on bail by the trial Court in the said crime. Against that, the complainant in the said case came before this Court for cancellation of bail however as per the submissions made by the learned counsel for the applicant in this case, the said application was permitted to be withdrawn in order to give opportunity to the complainant in that case to file application for cancellation of bail before the trial Court. It appears that after the applicant was released on bail for the offence punishable under Section 307, when he was on bail he committed the present crime. Thus, there cannot be any difficulty to record a finding that the applicant has misused the liberty granted to him by the Court of law, in another

crime. Thus, the applicant is having tendency to repeat the crime. In my view, though the applicant has not actually opened fire, his bail application has to be rejected because he is one of the conspirators.

(14) Insofar as parity is concerned, the submission made by the learned counsel for the applicant does not impress me because in the oral dying declaration the name of the applicant is there along with one Narayan Sharma, who is released on bail by the trial Court. From the reply it does not reflect as to whether there is any previous offence against said Narayan Sharma. Further it will be always open for the prosecution to file necessary application for cancellation of their bail.

(15) Looking to the fact that the applicant has misused the liberty granted to him and committed more serious offence when he was on bail, I am of the view that merely because the charge is not framed, that cannot be a ground for grant of bail in his favour. Consequently, the application is rejected.

JUDGE

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