

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

CRIMINAL APPLICATION (BA) NO. 511 OF 2021

Sheikh Iftekhhar @ Bablu Sheikh Ahemad and anr.

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri A.S. Mardikar, Senior Advocate with Shri S.G. Joshi,
Advocate for Applicant.

Shri A.M. Deshpande, A.P.P. for Non-applicant/State.

CORAM : **VINAY JOSHI, J.**
CLOSED FOR ORDER ON : **02/07/2021.**
ORDER PRONOUNCED ON : **05/07/2021.**

Hearing was conducted through Video Conferencing.

2. Registration of Crime No.6 of 2020 by the Police of Wani Police Station, District Yavatmal led the applicant to approach to this Court for grant of regular bail due to refusal of bail application by the Sessions Court. Besides usual grounds, it is canvassed that the applicant is arrested merely on suspension, since there is no material connecting him with the crime. It is argued that, besides offence punishable under Section 457 of the Indian Penal Code, all other offences are punishable with imprisonment, which may extend up-to seven years. According to him the provisions of Section 357 of the Indian Penal Code would not attract. In response to some antecedents brought on record by the prosecution, it is submitted

that the prior offences are quite old, the applicant was acquitted in all of them on full-fledged trial. Moreover, the applicant is ready to abide by every condition as may be imposed on him by this Court.

3. In response, the State resisted bail by reply-affidavit dated 29.06.2001. The prosecution story has been narrated in brief. It is contended that the applicant had committed theft of old machinery and had sold the same in the market. There is ample material against the applicant. Moreover, the applicant is habitual offender and if, he is released on bail, he would tamper with the prosecution witnesses as well as his presence for the trial cannot be secured.

4. The State Bank of Hyderabad had sanctioned huge loan in favour of M/s G.S. Oils Limited. In order to secure loan, the Company has mortgaged various pieces of land as well as hypothecated the machinery of the Oil Mill. Since the loan account turned into N.P.A., the Bank took symbolic possession of entire machinery and deployed security for its protection. During the period from 2012 onwards, time to time, the machinery was being stolen. The matter was reported to the Police but, they did not took cognizance. Finally, Bank Manager has filed a private complaint against unknown persons regarding the theft. Learned Magistrate before taking cognizance, has issued directions to the concerned Police to

register the Crime and investigate, in terms of Section 156(3) of the Code of Criminal Procedure. On the basis of said report, the Police investigated and during the course of investigation, the applicant came to be arrested on 10.02.2021.

5. It is the prosecution case that the applicant who is a scrap dealer had time to time removed the machinery of Oil Mill and had sold it at Jalna. The statement of Oil Mill owner has been recorded, who has stated about the theft of machinery. In order to show the complicity of the applicant, the prosecution has relied on the statement of Trader namely Shahid Khan who used to sell industrial oxygen cylinders. It is his statement that, besides several other customers, he has also sold oxygen cylinders to the applicant during the year 2016 to 2018. It was pointed to show that by use of oxygen cylinder, the applicant had cut the machinery of oil mill. The next reliance is on the statement of transporter namely Ejaz Ahemad Khan who has stated that during the period 2016 to 2018, the applicant has hired his vehicles to transport the goods from Bramhaniphata, Bhalar Road, where the company situated. The prosecution further relied on the statement of the applicant's employee namely Ashok Thakre, who stated that the applicant and some other, had removed machinery from Oil Mill and sent the said machinery to Jalna for sell. Besides that a chart showing transport booking, has been pressed

into service.

6. Learned Counsel for the applicant has pointed out that though the applicants' premises was searched, nothing incriminating was found from his possession. According to him, witness namely Ashok was also having privy in the crime and therefore, his statement cannot be relied. It is argued that, statement of transporter and oxygen cylinder shop keeper falls short to show that the applicant has committed the theft. Pertinent to note that though it is the prosecution case that the applicant has sold the stolen goods at Jalna, however, *prima facie* no material has been collected in the form of recording statement from the receiver of the said property. Though learned A.P.P. would submit that further investigation is going on, however, at present there is no material to that effect.

7. The prosecution contended that some previous offences of theft are registered against the applicant. In response, the applicant has produced copies of three judgments to show that in the year 2010, three offences of theft were registered against him, however, he came to be acquitted in all of them. Pertinent to note that in recent past, no such offences are registered against the applicant. True, there are some old offences, however, he is acquitted in those cases.

8. Learned Counsel for the applicant by placing reliance on the decision of ***Maulana Mohammed Amir Rashadi v. State of Uttar Pradesh and anr. (2012) 2 SCC 382*** would submit that while deciding entitlement for bail, the Court has to give primacy to find out the role of accused in the existing crime and then to see towards antecedents, if any. Moreover, reliance is also placed on the decision of Supreme Court in the case of ***Arnesh Kumar vs. State of Bihar and anr. (2014) 8 SCC 273*** to show that the arrest of applicant was totally against the directions issued by the Supreme Court. So far as, the second submission is concerned, at this stage, the ratio laid down in the case of Arnesh (supra), would be of no help. Certainly, while considering the entitlement for bail, existing material has to be considered at first instance and then one should turn towards antecedents. Now, the investigation is complete and charge-sheet has been filed. The offences are triable by the Magistrate. The trial will take considerable time for its disposal.

9. Having regard to the nature of material collected against the applicant and other circumstances, he can be released on bail. However, considering the antecedents, the applicant can be released on bail by putting stringent conditions. In view of that, following order :

(a) The Criminal Applicant stands allowed and

disposed of.

- (b) The applicant/accused Sheikh Iftekhar @ Bablu Sheikh Ahemad be released on bail in Crime No.06 of 2020 registered at Wani Police Station, District Yavatmal for the offence punishable under Sections 379 of the Indian Penal Code, on his furnishing P.R. bond of Rs.1,00,000/- with one solvent surety in the like amount.
- (c) The Applicant shall attend concerned Police Station on every alternate Monday in between 10.00 am to 12.00 noon till framing all charges in the trial.
- (d) 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.
- (e) The Applicant/accused shall provide his residential address and cell number to the concerned Investigating Officer.
- (f) Breach of either of condition would give rise to the prosecution to move this Court for cancellation of bail.

JUDGE