

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

CRIMINAL APPLICATION (ABA) NO. 364 OF 2021

Nilesh @ Buntty s/o Ratanlal Jaiswal

..vs..

State of Maharashtra, thr. P.S.O., Katol, District Nagpur

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

Court's or Judge's orders

Shri A.M. Jaltare, Advocate for applicant.

Shri M.J. Khan, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 19/07/2021

Hearing was conducted through Video Conferencing.

2. In apprehension of arrest in Crime No.174 of 2021 registered with Katol Police Station, district Nagpur for the offence punishable under Sections 65(a), 65(e) of the Maharashtra Prohibition Act 1949, Section 109 of the Indian Penal Code 1860, and Sections 177, 179, 184 and 130 of the Motor Vehicles Act 1988, the applicant urged for pre-arrest protection in terms of Section 438 of the Code of Criminal Procedure.

3. Learned Counsel appearing for the applicant mainly canvassed that, neither the applicant was concerned with the seized liquor nor with the vehicle which was found transporting illicit liquor. More emphasis is led on the point that on the basis of statement of co-accused, the applicant cannot be

hauled in the crime as well as there is no necessity to have custodial interrogation. Lastly, it is submitted that in pursuance of interim order dated 23.06.2021, the applicant had attended concerned Police Station during specified dates to facilitate the investigation.

4. Per contra, the state put it's strong resistance vide reply-affidavit dated 12.07.2021. The prosecution case in brief has been narrated in the reply. It is primely canvassed that, at the behest of the applicant- a liquor trader, illicit liquor was being transported from Madhya Pradesh State to District Wardha in Maharashtra State, which is prohibited area. The applicant was routinely indulging into the illicit liquor business. The applicant was constantly in touch with the driver of the vehicle during their journey as well as he was in touch with the person who sent goods from Madhya Pradesh State. According to the non-applicant/State, the complicity of the applicant is very much evident from his conduct. One other co-accused namely Sanjay Taywade from Madhya Pradesh is still absconding. The Investigating Agency needs the applicant's custody to unearth the genesis of crime and to throw light on various aspects.

5. It is the prosecution case that on 09.04.2021, the Police received information from secrete informant that one truck of Ashok Leyland Company bearing registration no.MH-14, MF-9478 was

transporting illicit liquor from Badgaon Chincholi, Madhya Pradesh towards Wardha via Katol Road. On receipt of said information, the Police led trap on Katol Road along with Panch Witnesses. Around 01.45 am on 09.04.2021, the Police accosted concerned vehicle and apprehended it's driver and cleaner namely Shivam Sharma and Giridhar Vithole respectively. Initially both of them mislead the Police by stating that the truck was transporting mineral water boxes of Oxycool Company. The Police suspected the foul play and had thoroughly inspected the boxes loaded in the truck. During the search, they found 4800 glass bottles containing illicit liquor labeled as 'Officer's Choice Blue'. This goods i.e. illicit liquor was worth Rs.16,41,200/- which was seized in presence of Panchas. Necessary samples were taken as a step of investigation.

6. On inquiry, it was learnt that the apprehended accused had no permit or transport pass to carry liquor from Madhya Pradesh towards Wardha. During investigation, it was transpired that, applicant Nilesh Jaiswal is a liquor vendor at whose instance co-accused Shivam Sharma and Girdhar Vithole went to Madhya Pradesh for fetching liquor. Since, there was complete lock-down in the State of Maharashtra, the liquor was brought from Madhya Pradesh for sell by evading Rules as well as excise duty.

7. Learned A.P.P. would submit that the applicant is a kingpin of entire episode. He is a habitual offender indulging into illicit liquor business. He had past criminal antecedents of similar nature. Apprehended co-accused Shivam Sharma was an employee-cum-driver of the applicant and was acting at his instructions. It is submitted that co-accused Sanjay Taywade from whom liquor was brought from Madhya Pradesh, is still absconding. The applicant's custody is necessary to trace the co-accused Sanjay Taywade as well as investigate into the direction as to exactly from where illicit liquor was brought and at which place it was being transported and who was supposed to sell said stock of liquor. According to the learned A.P.P. the applicant had played a vital role in illegal transportation of liquor and unless he undergoes custodial interrogation, the investigation cannot be taken to its logical end. It is also stated that the Police have issued a notice of appearance to the applicant, however, he did not remain present as well as evaded arrest.

8. Learned Counsel appearing for the applicant has disowned the applicant's nexus either with driver Shivam Sharma or with vehicle as well as stock of illicit liquor. However, during the investigation, the Police have collected C.D.R. record of the applicant to show his nexus with the apprehended accused as well

as absconding co-accused namely Sanjay Taywade. In order to have a clear picture about the repeated calls made by the applicant at relevant time, it is appropriate to reproduce paragraph 5 of the reply-affidavit which speaks for itself :

“5. That, upon requisition to Cyber Cell, Nagpur the investigating officer called CDR/SDR record of the present applicant. The SDR clearly reveals that, the calls were made from the mobile of the present applicant to that of the other accused. There are total 477 calls between the present applicant and the co-accused Shivam Mukesh Sharma from January to March 2021 and on the date of incidences between i.e. 08.04.2021 to 09.04.2021 there are total in and out 16 calls between the present applicant and the co-accused Shivam Sharma. As well as, on the day of incident i.e. 08.04.2021 to 09.04.2021 there are total in and out 3 calls between the present applicant and Giridhar Vithole. Similarly, on the day of incidence i.e. 08.04.2021 to 09.04.2021 there are total in and out 17 calls between the present applicant and the co-accused Sanjay Taywade who is still absconding.”

9. In support of said contention, CDR and SDR report has been tendered for perusal which is a part of case diary. It is evident that the applicant was very much connected with Shivam Sharma. More particularly, from the time when the truck left Madhya Pradesh on it's journey towards Nagpur, the applicant had total 16 calls with Shivam Sharma as well as made 17 calls to absconding co-accused Sanjay Taywade who allegedly sent illicit liquor. The feeble attempt was made from the applicant's side to state

that since Shivam Sharma was freelance driver, the applicant called him to engage him for a trip. Voluminous phone call, *prima facie*, falsifies the explanation, but on the otherhand it strongly supports to the prosecution case. A repeated phone calls at crucial time i.e. when the truck was on it's route, *prima facie*, suggests that the applicant was continuously monitoring the movement of the truck. Not only the applicant was in contact with his driver Shivam Sharma, but he was also in constant touch with Sanjay Taywade who had loaded the goods. The said material at this stage is sufficient to support the case of prosecution that, custodial interrogation of the applicant is necessary. Moreover, it is to be noted that still Sanjay Taywade is absconding meaning thereby he is not available for interrogation as on today. Case diary bears a statement of co-accused informing to the Police that Shivam Sharma was the driver of the applicant and at the applicant's instance, he had gone to Madhy Pradesh to bring illicit liquor. The statement of the co-accused would atleast provide a lead to the investigating agency to zero-down the direction of investigation. Case diary bears a copy of notice sent by the Police to the applicant seeking his attendance and assistance in the course of investigation, but he remained absence.

10. Learned Counsel for the applicant would submit that during interim protection, the applicant

had attended Police Station and therefore, his custodial interrogation is not necessary. Since there was no co-operation from the applicant, the State is seeking for rejection of bail. According to the applicant, the Police have not specified as to for what purpose, the applicant's custodial interrogation is necessary. In response, it is argued that his interrogation is necessary to find out as to from where the liquor was brought, to whom it was to be delivered, who paid the price and at whose instance it was being transported. Besides that, I may hasten to add that one cannot predict the various dimensions of the investigation nor it is a job of Court. During process of investigation, the applicant may throw light on various aspects which may prove to be fruitful to unearth the episode.

11. As per the prosecution case, it was a lock-down period in the State of Maharashtra where liquor shops were closed. During that period, the liquor was brought from the State of Madhya Pradesh that too being transported in Wardha district which is a dry district. Nearly, five decades after Maharashtra State imposed a blanket ban on the production, sell and distribution of alcohol in Wardha district owing to its historical links to Mahatma Gandhi still the said activities are in swing. Pertinent to note that the liquor was transported in clandestine manner by posing it to be mineral water. The arrested accused

i.e. driver and cleaner are mere pawns and therefore, due opportunity must be given to the investigating agency to reach to its roots. Moreover, there is no denial that there are criminal antecedents of similar nature against the applicant. It should not be forgotten that the huge quantity of illicit liquor namely 4800 bottles were being transported by evading excise duty.

12. Having regard to all these circumstances, the applicant does not deserve for pre-arrest protection. At this juncture, learned Counsel for the applicant would submit that the applicant desires to challenge this order before the Hon'ble Supreme Court. He would submit that since there was interim protection from 23.06.2021, it be extended for some period. Taking into account that interim protection was prevailing till date, following order is passed :

- (a) The Criminal Application stands rejected.
- (b) Interim protection granted by this Court would be extended till 29.07.2021, only.

JUDGE