

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

CRIMINAL APPLICATION (BA) NO.640 OF 2021

(Shafir Hasan s/o Najir Hasan Vs. State of Maharashtra thr. PSO PS Deori, Dist.
Gondia)

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

Court's or Judge's orders.

Mr. R.K. Tiwari, Advocate for Applicant.
Mr. N.S. Rao, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 9th AUGUST, 2021.

Heard.

2. Mr. Pravin Rambhau Dhande, who is a driver by occupation, lodged report dated 01.03.2021 with the Nagbhid Police Station alleging that on 27.02.2021 at 09:00 p.m., he loaded 25 Tonnes and 40 Kg iron worth Rs.12,45,633/- (Twelve Lakhs Forty Five Thousand and Six Hundred Thirty Three only) from Lingaraj Company, Chhattisgarh for transportation to S.K. Steel, Wardhaman Nagar, Nagpur, and in the midst of the journey, at 08:30 a.m. on 28.02.2021 seven persons, who were travelling in Xylo four wheeler, forcibly stopped the truck, assaulted him with fists and took away the iron. Mr. Pravin Dhande states, that he was assaulted and forced to sleep on the rear seat of the cabin with hand tied and eyes covered with a towel. He then states that one of the assailants were driving the

truck and the other five were in the cabin. In the concluding paragraph, the reference to the number of assailants is 'eight'.

3. Be that as it may, the name of the applicant allegedly surfaced during the course of investigation and according to the prosecution he was identified by Mr. Pravin Dhande in the test identification parade (TIP) held on 03.04.2021.

4. Other than the identification, no other material is brought to my notice as would link the applicant with the crime.

5. Mr. Tiwari, the learned counsel for the applicant has twin submissions to canvass and both question the probative value of the TIP. The first submission is that the Standard Operating Protocol and the manual was ignored while selecting the participants in the test identification parade and the second submission is that there is every possibility that the applicant was shown to the complainant before the TIP.

6. In support of the latter submission, my attention is invited to the statement of one Bandu Chiwde which is to the effect that on 04.03.2021 he was summoned at the police station and was told that the applicant Shafir was one of the seven to eight assailants who committed the dacoity

and that offence is registered against the applicant Shafir.

7. Mr. Tiwari points out that the arrest of the applicant is shown on 05.03.2021, and on that day, indubitably the statement of the complainant was recorded at the police station. What is suggested is that the applicant was already in the custody of the police, which can be the only explanation for Bandu's version, and that he was pointed out to the complainant when the complainant was at the police station on 05.03.2021.

8. I am consciously not making a definite observation on the probative value of the test identification parade, which appears to be the only incriminating material, lest either the accused or the prosecution is prejudiced. It would ultimately be for the trial court to assess the probative value of the TIP.

9. However, in my considered view, considering the material on record, a case is made out for grant of bail.

10. Mr. Rao, the learned APP points out that the accused is implicated in another offence. The prosecution case is that employees of a contractor engaged by Sunflag Company to transport furnace oil adulterated the oil by mixing water and low grade oil. According to the prosecution the applicant was an employee of the godown owner one Hemraj Dakhore, who is accused 2. Accused 1 in that offence is the driver of the tanker. In that offence, the

applicant is implicated on the basis of the statement of the co-accused and call detail record showing his presence at the godown where some oil was pilfered.

11. I am not inclined to deny bail only on the ground that the applicant is involved in some other offence involving pilfering oil.

12. However, I am imposing extremely strict conditions and any breach would *ipso facto* entitle the prosecution to seek cancellation of bail.

13. The applicant be released on bail in connection with Crime 40/2021 registered with Police Station Deori, District Gondia for offences punishable under sections 341 and 395 of the Indian Penal Code on executing personal bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

14. The applicant shall not indulge in any criminal activity while on bail. Even a single violation of this condition will entail in cancellation of bail, if the State moves an appropriate motion.

15. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

16. The applicant shall not leave the country without the permission of the trial Court.

17. The application is allowed in the aforesaid terms.

JUDGE

NSN