

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

CRIMINAL APPLICATION (ABA) NO. 516 OF 2021

Srinivas Reddy Awala s/o Shankar Reddy Awala

..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. Ambatkar, Advocate for applicant.
Shri I.J. Damle, A.P.P. for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 17/09/2021

1. Registration of Crime No.539 of 2021 with the Police of Chandrapur City, District Chandrapur for the offence punishable under Sections 307, 120-B of the Indian Penal Code, Sections 3 and 25 of the Arms Act, 1959, led the applicant to approach this Court for grant of pre-arrest protection. The bail is prayed by claiming innocence, false implication and inadequacy of material, etc.

2. The non-applicant/State resisted bail by filing reply-affidavit. Besides that, it is contended that the applicant has involved in the commission of serious crime. His custodial interrogation is necessary to recover the mobile hand set, vehicle, shoes and to trace the other absconding accused.

3. The Crime was registered at the instance of

report lodged by the mother of injured namely Aakash alias Chinna. It is the prosecution case that injured Aakash was involved in the case of murder of one Suraj Bahuriya. Injured Aakash secured bail in said case. On the date of the occurrence, i.e. on 12.07.2021, in the afternoon, the informant learnt that the injured was admitted in the Government Hospital since he sustained bullet injuries. Immediately, the informant rushed to the Hospital where, she learnt about the happening from the injured himself. She was informed by the injured that co-accused Chhotu Suryawanshi and Mangesh Bawane along with their associates assaulted him by means of firing from the revolver. At relevant time co-accused Chhotu Suryawanshi was wearing a veil. Further, the injured stated several named persons including the applicant, have hatched conspiracy which resulted into causing gun shot injury.

4. Heard both sides and gone through the case paper. In present crime, the Police have arrested 7 to 8 persons whilst some were shown to be absconded. Country made revolver used in commission of crime came to be seized from co-accused. Perusal of statement of informant and injured, *prima facie*, indicates that bullets were fired by co-accused Chhotu Suryawanshi who was already arrested. The injured in his statement has stated that co-accused Chhotu Suryawanshi fired bullets whilst he was accompanied

by persons namely D.K. Rahul, Bacchi Arch, Mangesh Bawane. He further alleged that, assault was the result of conspiracy hatched by several persons including the applicant. *Prima facie*, it is evident that the charge against the applicant is of hatching criminal conspiracy.

5. I have gone through the statement of several witnesses recorded by the Police during the course of investigation. It is transpired that the applicant is a member of assailant gang. On the point of conspiracy, some witnesses stated that 2 to 3 days prior to the occurrence, they heard that some named persons were talk about the conspiracy. However, the name of the applicant has not been stated. All witnesses while concluding their statements, referred names of several persons including the applicant alleging that they hatched conspiracy. *Prima facie*, it indicates that there is no material to indicate that the applicant had hatched conspiracy soon before the occurrence. The general statement that all persons including the applicant, hatched conspiracy is of no significance.

6. True, there cannot be a direct evidence on the point of conspiracy, but in order to draw inference of conspiracy, there must be atleast some material. The statement of witnesses does not say about participation of the applicant in hatching conspiracy.

The State is also unable to point out specific material against the applicant to show that he was a part of conspiracy. On the basis of general statement, applicants' liberty cannot be curtailed.

7. Learned A.P.P. would submit that the accused is history-sheeter against whom 8 offences were registered in past. The chart annexed to the reply-affidavit, itself indicates that in all offences the applicant was acquitted. In absence of material in existing crime, merely on the basis of antecedents that too, in which the applicant was acquitted, his entitlement for pre-arrest protection cannot be rejected. However, it reveals that the applicant is a member of assailant gang. It reveals that there are two rival groups and the occurrence is out of group rivalry.

8. In view of that the applicants' liberty can be protected by putting him on stringent terms. Hence, the following order :

- (a) The Criminal Application stands allowed and disposed of.
- (b) Ad-interim order dated 18.08.2021 is hereby made absolute upon same terms and conditions.
- (c) The applicant shall continue to attend

concerned Police Station till the filing of charge-sheet or for the period of three months, whichever is earlier.

- (d) The applicant/accused shall not enter into the limits of Ballarshah Taluka for the period of one year from his release except attending the Police Station.

JUDGE

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