

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

CRIMINAL APPLICATION (BA) NO. 1032 OF 2020

Gopi s/o Purushottam Parale and another

vs.

State of Maharashtra, through PSO PS Nandanwan, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P. K. Tiwari, Advocate for the applicants.
Mr. A. M. Kadukar, APP for respondent State.

CORAM : MANISH PITALE J.

DATE : 10th JUNE, 2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the applicant as well as the learned APP.

3. In the present case, the applicants have approached this Court seeking bail in respect of offence registered initially against unknown persons for offence under Section 395 of the Indian Penal

code. The FIR No.669 dated 31/08/2019, registered at Police Station Nandanwan, District Nagpur.

4. The learned counsel appearing for the applicants has invited attention of this Court to the contents of the oral report leading to registration of the aforesaid FIR and he has contrasted the same with other material on record including documents to show that the applicants were arrested on the next day after about six hours of the incident and that it appeared through the record that the Police had supplied the names of the applicants to the complainant when statement of the complainant was recorded on the next day of the incident i.e. 01/09/2019. It was further pointed out that in the initial test identification parade, the complainant was unable to identify the applicants and in a subsequent such exercise carried out after about four months of the incident, only applicant No.2 was identified. Attention of this Court was also invited to the panchnama concerning CCTV footage of the Bar where the incident had allegedly taken place. It was submitted that even if the panchnama was to be accepted, at worst there was description of ransacking of the Bar and forcible taking away of cash from the

cash box of the Bar was missing, thereby, indicating that the essential ingredients of offence under Section 395 were not made out in the present case.

5. Apart from this, the learned counsel for the applicants further invited attention of this Court to a petition for quashing of the FIR jointly filed by the complainant and the applicants before this Court, wherein the complainant has categorically stated that the incident of forcibly taking away cash from the cash box of the Bar had never taken place during the incident in question. It was fairly submitted that the question as to whether the FIR could be quashed on such joint application was another matter, but the contents of the petition did indicate that the allegation pertaining to offence under Section 395 of the IPC was far-fetched.

6. The learned APP Mr. Kadukar invited attention of this Court to the reply filed on behalf of the respondent State and it was submitted that both the applicants were history-sheeters with number of crime registered against them, including a proceeding for preventive detention initiated against the applicant No.1. It was submitted that applicant No.1 was a gang

leader of an organized crime syndicate and that both the applicants would be indulging in further such activity, if they are enlarged on bail.

7. In the present application, this Court is concerned with the prayer made on behalf of the applicants for grant of bail pertaining to the incident in question leading to registration of the aforesaid FIR. A perusal of the oral report leading to registration of FIR would show that the informant did not know the applicants and hence, it was stated that unknown persons had allegedly indulged in activity leading to registration of offence under Section 395 of the IPC. But, the statement of the complainant recorded thereafter, specifically names the applicants in connection with the aforesaid incident and this prima facie appears to be at the behest of the police. Apart from this, the panchnama dated 01/09/2019, pertaining to the CCTV footage of the Bar in question where the incident is said to have taken place shows that there is no specific description regarding forcible taking away of cash from the cash box of the Bar.

8. The document obtained by the applicants under the provisions of the Right to Information Act

2005, shows that on 25/09/2019, test identification parade was conducted, wherein the applicants were present along with others and the informant was the witness who was to identify them. The said document does not show that the informant was able to identify the applicants as the persons responsible for the said incident. It appears that four months after the incident another such test identification parade was carried out in which the complainant allegedly identified only applicant No.2. These are factors which inure to the benefit of the applicants to indicate that prima facie their involvement in the incident in question pertaining to offence under Section 395 of the IPC is rendered doubtful.

9. As regards the criminal antecedents of the applicants, details of which have been stated in the reply filed on behalf of the State, suffice it to say that insofar as the present application is concerned, this Court is required to appreciate the material available on record to conclude prima facie finding as regards the involvement of the applicants in the incident in question, which led to registration of FIR. If the respondent State apprehends that the criminal antecedents of the applicants would indicate that they

might indulge in criminal activities upon being released on bail, the State is very much capable of taking appropriate steps in accordance with law. But, only for the reason that the applicants have criminal antecedents, they cannot be deprived the relief of bail insofar as the present case is concerned, as long they are able to demonstrate prima facie case in their favour.

10. In view of the above, the application is allowed in the following terms :-

(a) The applicants shall be released on bail on furnishing PR Bond of Rs.50,000/- (Rupees Fifty Thousand only) and a surety in the like amount each, in connection with FIR No.669 dated 31/08/2019, registered at Police Station Nandanwan, District Nagpur.

(b) The applicants shall report to the Police Station, Nandanwan, Nagpur on the 2nd and 4th Monday of each month between 10.00a.m. to 12.00 noon.

(c) The applicants shall attend proceedings before the trial Court and they shall co-operate

with the trial Court for expeditious conduct of the trial.

(d) The applicants themselves or through any other person shall not tamper with the evidence or influence the prosecution witnesses.

11. Needless to say, in case the applicants violate any of the aforesaid conditions they shall be liable for cancellation of bail. It is further made clear that observations made in the present order are limited to the question of grant of bail to the applicants and that the trial Court shall proceed in the trial proceedings without being influenced by the observations made herein above.

JUDGE