

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

CRIMINAL APPLICATION (BA) NO.52/2022

Bunty @ Harsh s/o Rajkumar Jais

...Versus...

State of Maharashtra, through Police Station Officer, Police Station Kotwali,
Nagpur

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

Court's or Judge's orders

Shri R.M. Patwardhan, Advocate for applicant
Mrs. S.Z. Haidar, APP for respondent
Shri O.K. Masurke, Advocate assisted to prosecution

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/02/2022

1. Heard Shri Patwardhan, learned Counsel for the applicant and Mrs. Haidar, learned Additional Public Prosecutor for the respondent/State.
2. The applicant is arraigned for the offence punishable under Sections 302, 34, 504, 144, 147, 148, 149 of Indian Penal Code read with Sections 4, 25 of the Arms Act and Section 135 of the Bombay Police Act. The incident is dated 23/5/2021 at 11:30 p.m, the arrest is on 24/5/2021 and the charge-sheet has been filed on 17/8/2021.
3. Learned Counsel for the applicant submits, that since the alleged incident has occurred at about 11:30 in the

night, the presence of the applicant on the spot of the incident is doubtful. He further contends that though Gaurav Ashok Kate (pg. 85), Vinod Madhavrao Pande (pg. 87), Mohd. Shumel Mohd. Ashpak (pg. 107) and Javed Ansari Mohd. Ansari (108) claimed to have witnessed the incident on the fateful night, they have failed to identify the applicant. Even otherwise, he submits that though the applicant was arrested on 24/5/2021, the test identification parade was conducted two months thereafter. He further submits that none of the witnesses attributes any overt act to the applicant, nor there is any recovery from the applicant, except for the clothes. He, therefore, submits, that the incarceration of the applicant is merely on the basis of suspicion of being on the spot, which according to him, cannot be sustained, due to the delay in the test identification parade, more so, when the applicant was already arrested on 24/5/2021.

4. Learned Additional Public Prosecutor for the respondent/State opposes the application and submits that the involvement of the applicant in the incident is manifest from the statements of the aforesaid witnesses, who, in the test identification parade, have identified the applicant as the person, who was present on the spot. She, however, fairly admits that none of the witnesses attributes any overt act on part of the applicant, nor any recovery has been made from the applicant, except for the clothes and one motorcycle. She,

therefore, submits that the application be rejected, as there are antecedents of the applicant, in as much as the applicant as a juvenile, was arrested on two occasions in the offence under Section 379 of Indian Penal Code.

5. The incident has occurred at 11:30 in the night of 23/5/2021. None of the witnesses, namely, Gaurav Ashok Kate, Vinod Madhavrao Pande, Mohd. Shumel Mohd. Ashpak and Javed Ansari Mohd. Ansari have attributed any role to the applicant. That apart, though the applicant was arrested on 24/5/2021, the test identification parade has been conducted more than two months thereafter, during which entire period, the applicant was in custody of the police and in Magisterial Custody Remand (MCR) and therefore, the same, would *prima facie* cast a doubt upon the veracity of the test identification parade. So also, there is no recovery from the applicant except for the clothes and motorcycle, which indicates, that *prima facie* linkage of the applicant to the offence becomes doubtful. Though the applicant has criminal antecedents, the said two offences, relate to theft under Section 379 of the Indian Penal Code, when the applicant was a juvenile.

6. Considering the above circumstances and the absence of a definite linkage and so also absence of any overt act on part of the applicant, merely his presence that too on the basis of test identification parade conducted, two months

after his arrest, would in my considered opinion, entitle the applicant for bail. Hence, the following order.

ORDER

(i) The criminal application is allowed. The applicant, namely, Buntty @ Harsh s/o Rajkumar Jais be released on bail for the offence punishable under Sections 302, 34, 504, 144, 147, 148, 149 of Indian Penal Code read with Sections 4, 25 of the Arms Act and Section 135 of the Bombay Police Act in Crime No.132/2021 on his furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with two solvent sureties in like amount.

(ii) The applicant shall not tamper with the prosecution witnesses, nor shall attempt to unduly influence them, in any manner whatsoever.

(iii) The applicant, during the course of the trial, shall attend each and every date before the learned Sessions Court and shall also not indulge in any offence of whatsoever any nature. Even a single default in these conditions shall entail in cancellation of bail.