

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

CRIMINAL APPLICATION (BA) NO.143 OF 2022

Juberkhan s/o Noor Mohammad Mev

Vs.

The State of Maharashtra Through Police Station Officer, Police Station, Mangrulpur,
District Washim

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

Court's or Judge's orders

Mr. V. R. Deshpande, Advocate for applicant.
Mr. H. D. Dubey, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 07/03/2022

Heard Mr. Deshpande, learned counsel for applicant and Mr. Dubey, learned APP for non-applicant/State.

2. The applicant is arraigned for the offence punishable under Sections 395, 380, 342, 427, 506(B) and 120-B of the Indian Penal Code. The incident is dated 08.05.2019. The FIR is lodged on 09.05.2019. The applicant has been arrested on 23.07.2019. The charge-sheet is filed on 05.09.2019.

3. Mr. Deshpande, learned counsel for the applicant submits, that the sequence of event would demonstrate that the applicant has been roped merely on the basis of suspicion without having material against him. He submits, that there are some substantial delays in the matter as much as the statements of alleged eye

witnesses namely, Lakhan Chavan (page 85) and Murlidhar Mule (page 87) have been recorded on 07.07.2019, more than two months after the date of the incident. The Test Identification parade, has been conducted four months thereafter in which Murlidhar Mule has identify the applicant and Lakhan Chavan, has identified the applicant as well as one Surajpal Dharampal Bharadwaj, who has already been released on bail by this Court in Criminal Application (BA) No.1004 of 2021 by order dated 20.10.2021 and the role of the applicant is identical to that of Surajpal Bharadwaj as such, on the ground of parity, the applicant is entitled to bail.

4. Mr. Dubey, learned APP for the non-applicant/State, opposes the application and submits, that the involvement of the applicant has been spoken up by Lakhan Chavan, who is the eye witness. He submits, that the delay in recording their statements as well as the Test Identification parade has been justified, considering that those witnesses were earlier not traceable. He submits, that the applicant resides out of the State and so also has criminal antecedents, considering which, the application be rejected.

5. The applicant has been arrested on 23.07.2019, on the basis of the statement of Lakhan Chavan (page 85) and Murlidhar. The delay in recording the statement of Lakhan Chavan and Murlidhar is more than two months and the Test Identification parade is

four months thereafter, which delay itself has telling effect on the prosecution story. That apart, the co-accused Surajpal Bharadwaj, who was having a similar role, has already been enlarged on bail by this Court. Considering that, the charge-sheet has been filed on 05.09.2019 and the circumstance of the release of the co-accused and the delay as indicated above, I do not see any reason to further continue the incarceration of the applicant. The apprehension expressed by the learned APP for non-applicant/State can be taken care of by putting stringent conditions. Hence, the following order.

ORDER

- (i) The applicant be released on bail in Crime No.174 of 2019 for the offence punishable under Sections 395, 380, 342, 427, 506(B) and 120-B of the Indian Penal Code, on furnishing P.R. bond of Rs.50,000/- (Rupees Fifty Thousand only) and two local sureties who are permanent resident of Mangrulpir in the like amount.
- (ii) The applicant shall not tamper with the prosecution evidence nor shall try to influence them in any manner whatsoever.
- (iii) The applicant shall not indulge into any criminal activity while on bail.
- (iv) The applicant shall attend each and every date before the learned Sessions Court.
- (v) Violation of any of these conditions shall result in cancellation of bail.