

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

CRIMINAL APPLICATION (BA) NO.309 OF 2022

Tansingh s/o Manher Kumoti

Vs.

State of Maharashtra, Through P.S.O. Korchi, Police Station Korchi, Dist. Gadchiroli

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

Court's or Judge's orders

Mr. H. P. Lingayat, Advocate for applicant.

Ms. Mayuri Deshmukh, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 26/04/2022

Heard. Mr. Lingayat, learned counsel for the applicant and Ms. Deshmukh, learned APP for non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Sections 307, 353, 143, 147, 148, 149 and 120-B of the Indian Penal Code and Section 5/28 of the Indian Arms Act and Section 135 of the Bombay Police Act, in Crime No.58 of 2020.

3. Mr. Lingayat, learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the matter. He submits the record does not demonstrate, any involvement of the applicant in the alleged crime, considering which, the application is liable to be accepted and the applicant be

released on bail. He also places reliance upon ***Rashid Gafoor Parkar and others Vs. State of Maharashtra, 1982 SCC OnLine Bom 278*** in support of its contention. Reliance is also placed upon ***Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another, 2012 (2) SCC 382*** (para 10) and ***Prabhakar Tewari Vs. State of Uttar Pradesh and another, 2020 (11) SCC 648***, both on the point of criminal antecedents and so also of the order of this Court in ***Dulsa Mangu Hedo and others Vs. State of Maharashtra in Criminal Application (BA) No.378 of 2018 decided on 4th July 2018***.

4. Ms. Deshmukh, learned APP for the non-applicant/State opposes the application and submits that the involvement of the applicant in the aforesaid offences, is clearly indicated from the record. It is further submitted that the applicant, is rendering assistance to the naxals by providing weapons, money and information about the movement of the Commandos and so also, there is earlier Crime No.17 of 2018 registered against the applicant for the offence punishable under Section 307, 353, 143, 147, 148, 149 and 120-B of the Indian Penal Code and Section 4 and 5 of the Explosive Substances Act, 1908 and therefore, the application needs to be rejected.

5. The date of the incident is 07.10.2020. The arrest of the applicant is dated 04.09.2021. The

charge-sheet is filed on 26.11.2021. The record indicates that on 07.10.2021 at about 7 a.m. the police upon receiving information had been to the jungle of Mouza Kesaldabari, and were conducting anti naxal campaign, when at Mouza Mayalghat jungle at about 9.00 a.m. they came across about 22 to 25 naxals, as a result of which, there was firing in between them pursuant to which the offence has been registered. During the course of investigation, it has been revealed, in the statement of Jatin @ Raghu Bavaji Tumreti (page 296) and Vilas @ Dasaru (page 297) that the present applicant is the person who is supplying weapons, explosives and information to the naxalites which indicates the involvement of the applicant in the aforesaid crime. So also, there is an earlier FIR as indicated above against the applicant in which the applicant is the accused No.18 (page 130), which also indicates the linkage of the applicant with the criminal activities of the above nature. No doubt, that in ***Maulana Mohammed Amir Rashadi*** and ***Prabhakar Tewari*** (supra) it has been held that criminal antecedents by themselves cannot be a ground to reject an application for bail, at the same time, they also indicate that the role of the accused, in the case also is a material aspect, in determining whether the applicant is entitled for bail. In ***Dulsa Mangu Hedo*** (supra) the only consideration which, weighed with the Court was that the only material against the applicant was the statement of the co-accused under Section 27 of

the Indian Evidence Act. In the present case, the situation as indicated from the statements of Jatin and Vilas (who are not the co-accused), is different. ***Rashid Gafoor Parkar*** (supra) is also on the same footing on which ***Dulsa Mangu Hedo*** (supra) has been decided and therefore, has no applicability. In ***Haricharan Kurmi Vs. State of Bihar, (1964) 6 SCR 623***, what has been stated, is that confession by a co-accused cannot be treated as evidence of a substantive in nature, which position is not extant here. Further considering the provision of Section 30 of the Evidence Act, it is stated that conviction on the basis of the uncorroborated testimony accomplice is not illegal. In the instant matter as stated above, the persons stated above are not indicted as accused and are neither the accomplice of the co-accused considering which I am not inclined to accept the present application. The same is accordingly rejected. No costs.

JUDGE

Sarkate