

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

CRIMINAL APPLICATION (BA) NO.749 OF 2022

Pamesh S/o Pannalal Patle

Versus

State of Maharashtra, through P.S.O., P.S. Duggipur, Dist. Gondia

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

Court's or Judge's Order

Shri A.C. Jaltare, Advocate for the applicant.

Shri N.R. Rode, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 22/07/2022

1. The applicant is seeking pre-arrest bail in Crime No.155 of 2021, dated 14.06.2021, registered with Police Station Duggipur, District: Gondia, for the offences punishable under Sections 302 and 120-B of the Indian Penal Code and Section 4 and 25 of the Arms Act.

2. Shri Jaltare, learned counsel for the applicant submits that the whole case is based on circumstantial evidence and there is no material to connect the applicant with the alleged offence. He therefore, submits that the applicant has been falsely implicated in the alleged offence.

3. He submits that the only circumstance which the prosecution has placed in service, to oppose the present application is that there is a recovery under Section 27 of

the Indian Evidence Act. He submits that even if the recovery is considered, no blood stains were found even on a iron rod or on a knife. Thus, the recovery doesn't connect the applicant with the alleged offence.

4. He further points out that, because some amount alleged to have been deposited in the account of the applicant by the co-accused, who is absconding, is not sufficient to implicate the applicant.

5. He further submits that on the basis of assumption and presumption, the prosecution cannot oppose the application without having any cogent evidence. Thus, he submits that as the applicant is in jail since last one year and the investigation is over, he may release on bail.

6. Shri Jaltare, learned counsel for the applicant submits that the co-accused who alleged to have hatched the conspiracy, they have already been released on bail and thus, the applicant is entitled for grant of bail on the principle of parity.

7. On the other hand, Shri N.R. Rode, learned APP strongly opposes the present application and submits that, considering the fact that the amount was deposited from a village near Bangladesh border, in the account of the

applicant and his wife, it sufficiently connects the applicant with the alleged offence.

8. He further submits that there is recovery of a knife and a iron rod under Section 27 of the Indian Evidence Act,. He therefore, submits that *prima facie* at this stage sufficient circumstantial evidence available there to connect the applicant in the alleged offence and accordingly, he prays for rejection of the present application.

9. I have perused the Charge-sheet and First Information Report (FIR).

10. In this case, though the recovery is under Section 27 of the Evidence Act, a query report says that no blood stains were found on the iron rod or on the knife. At this stage, there is nothing to *prima facie* show that the amount was deposited by the co-accused in the account of the applicant and his wife. No CDR is collected by the Investigation Officer in relation to the applicant.

11. Thus, at this stage, recovery under Section 27 of the Evidence Act, cannot be made the sole basis for denial of bail to the applicant, in absence of any other incriminating material available on record. The applicant is in jail since last one year and the investigation is completed in this case.

12. Thus, in the above referred backdrop and considering the circumstantial evidence on which the prosecution is relying upon, I am of the opinion that the applicant is entitled for grant of bail. Moreover, as the other co-accused persons have already been released on bail, who have as per the prosecution story hatched the conspiracy, I pass the following order.

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No. 155 of 2021, dated 14.06.2021, registered with Police Station Duggipur, District: Gondia, for the offences punishable under Sections 302 and 120-B of the Indian Penal Code and Section 4 and 25 of the Arms Act, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station on 1st and 16th of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- d) The applicant shall not tamper with the prosecution witnesses.

- e) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.
- f) The State is at liberty to apply for cancellation of bail, in case breach of condition.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]