

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

CRIMINAL APPLICATION (BA) NO.815 OF 2022

(UDAY DEVIDAS GOPLANI....VS.. STATE OF MAH. THR. PSO PS RAMNAGAR, GONDIA)

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

Court's or Judge's orders

Shri Avinash Gupta, Sr.Advocate a/b. Shri A.A.Gupta, Adv. for Applicant.
Shri V.A.Thakre, A.P.P. for Non-applicant /State.
Shri H.P.Lingayat, Advocate to Assist Prosecution

CORAM : ANIL S. KILOR, J.

DATED : AUGUST 17, 2022.

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.15 of 2022, registered with Police Station, Ramnagar, Gondia, District : Gondia for the offences punishable under Sections 307 and 120-B of the Indian Penal Code and Sections 3, 25 and 27 of the Indian Arms Act, 1959.
3. Shri Gupta, learned Senior Advocate argues that, the allegations that the applicant had threatened the informant six months prior to lodgment of the First Information Report (FIR), of dire consequences and that while firing a shot through pistol two co-accused questioned the informant that why he was interfering in the matter of Uday Goplani and Ganesh Jadhav, is the sole basis to arraign the applicant as accused in the present offence.

4. It is submitted that Section 120-B of the Indian Penal code is invoked in this case. However, nothing has been brought on record to show that the applicant is the conspirator. Even from the CDR nothing has been brought on record to connect the applicant with the alleged offence. It is submitted that as far as the phone calls between the applicant and the co-accused Neeraj Wadhwani are concerned, both are in same trade and business of land dealing. Thus, considering their old relations and the nature of business, the CDR showing phone calls between the applicant and the co-accused Wadhwani, have no relevance to connect the applicant with the alleged offence.

5. Shri Gupta, learned Senior Advocate further submits that there are no criminal antecedents to the discredit of the applicant. It is pointed out that the ownership of the land in question is in dispute and a civil suit is filed by the present applicant claiming ownership over the said plot, which is pending. He further states that there are contradictions in the statements of the witnesses, recorded during the investigation. He, therefore, submits that there are less chances of applicant being convicted in this case.

6. Shri Gupta, learned Senior Advocate, further argues that in this case the investigation is completed and the charge-sheet has been filed. It is pointed out that the

applicant is in jail from last about eight months and his further custody is not necessary. He submits that incarceration for uncertain period will amount to pre-trial conviction. He, therefore, prays that the applicant may be released on bail

7. On the other hand, Shri Thakre, learned A.P.P. strongly opposed the application and submits that it is a serious offence and a bullet was fired through a pistol wherein the informant got injured. It is submitted that the applicant has threatened the informant and owner of the plot in dispute, which sufficiently show that there was motive. It is submitted that the offence is premeditated and as there is a sufficient incriminating material, this Court may reject the application.

8. Shri Lingayat, learned Advocate who is assisting the prosecution on behalf of the complainant, submits that the accused Nos.3 and 4 were hired by the applicant and the accused No.2. It is submitted that the accused Nos.3 and 4 were carrying a pistol, which shows the intention of the assailants, to kill the informant. Accordingly, he submits that as the offence is very serious this Court may not grant bail to the applicant.

9. I have perused the Charge-Sheet and the F.I.R.

10. The charge-sheet shows that the dispute is about a plot admeasuring 3350 Sq.Ft. It appears that wife of Santu Rao purchased the plot and gave Power of Attorney to the informant, to deal with the said plot to sell or to give possession of the said plot.

11. The applicant has filed a civil suit claiming declaration as owner of the said plot, which is pending.

12. The allegations made in the FIR show that six months prior to lodging of the FIR, the informant and Santu Rao went to the applicant, thereupon, the present applicant asked the informant and Santu Rao to sell the said plot to him and on refusal by Santu Rao, there was verbal altercation and during which the applicant threatened them. However, after the said incidence, till lodgment of the FIR or the alleged incidence there was no threat or any overtact attributed to the applicant.

13. The allegations made in the FIR further show that the assailants, before firing a shot through pistol, uttered that, why the informant was interfering in the matters of the accused Nos.1 and 2.

14. Thus, it can be seen that, the threat given by the applicant six months prior to lodgment of the report and the utterance of certain words by the assailants before firing a shot by pistol, is the basis to arraign the applicant as an accused in this case.

15. *Prima-facie*, there are certain contradictions in the statements of the witnesses. However, at this stage, I refrain myself from making any comment on the same.

16. Thus, considering the material available on record and the period of incarceration of the applicant, I am of the opinion that as the investigation is completed further custody of the applicant is not necessary in this case. Moreover, there are no antecedents to the discredit of the applicant.

17. As far as apprehension of the A.P.P. that if the applicant is released on bail he may tamper with the prosecution witnesses, is concerned, the same can be addressed by imposing certain stringent conditions. Accordingly I pass the following order:

- i) The application is **allowed**.
- ii) It is directed that the applicant shall be released on bail in Crime No.15 of 2022, registered with Police Station, Ramnagar, Gondia, District : Gondia for the offences punishable under Sections 307 and 120-B of the Indian Penal Code and Sections 3, 25 and 27 of the Indian Arms Act, 1959, on his furnishing P.R. Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount.

iii) The applicant shall not enter into the territorial jurisdiction of Gondia till culmination of the trial.

iv) The applicant shall provide his address and name of the nearest Police Station which he shall attend on every first and sixteenth day of every month between 10:00 a.m. and 11:00 a.m., till culmination of the trial.

v) The applicant shall not tamper with the prosecution evidence.

vi) The State is at liberty to move for cancellation of bail if any default on the part of the applicant.

vii) The applicant shall attend the trial on each and every date before the Special Court unless exemption is granted by the Special Court.

The criminal application is **disposed of** in the above terms. Pending application(s), if any shall stands disposed of.

JUDGE

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