

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

CRIMINAL APPLICATION (BA) NO.939 OF 2022

(MAHENDRA RUPNARAYAN SOLANKI....VS.. STATE OF MAH. THR. PSO PS PARATWADA, DIST.
AMRAVATI)

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

Court's or Judge's orders

Shri V.B.Gawali, Advocate for Applicant.
Shri V.A.Thakre, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 29 2022.

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.387 of 2019, registered with Police Station, Paratwada, District: Amravati for the offences punishable under Sections 302, 324, 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, 1951.
3. The learned counsel for the applicant submits that though initially the offence was registered against six accused persons, however, subsequently 34 names were added to it. It is submitted that except the applicant all others have been released on bail. Accordingly, he prays for grant of bail on the principle of parity.
4. He further submits that in the F.I.R. name of the accused No.1 is mentioned as 'Mahatma Thakur', whereas, the applicant is 'Mahendra Rupnarayan Solanki'.

It is submitted that nothing has been pointed out by the prosecution that Mahendra Rupnarayan Solanki-applicant and accused No.1-Mahatma Thakur are one and the same.

5. He further points out that co-accused Shera was released on bail on the ground that the prosecution failed to show that Shera and Nilesh Makode are one and the same. He submits that similar is the case of the applicant.

6. He further points out that the prosecution is opposing the application of the applicant on the ground that the applicant was absconding and the charge-sheet was filed under Section 299 of the Code of Criminal Procedure (Cr.P.C.), whereas the case of Shera is similar on this point also with the applicant.

7. The learned counsel for the applicant submits that there is no material or any evidence available on record to show the involvement of the applicant. It is submitted that the whole case is based on circumstantial evidence. He, therefore, submits that as the applicant is in jail from last about five months and as the charge-sheet has been filed, further custody of the applicant is not necessary.

8. On the other hand, the learned A.P.P. strongly opposed the application and submits that there are seven

witnesses to the incidence who have named the applicant. He further points out from the charge-sheet that the applicant and Mahatma Thakur are one and the same. He submits that the applicant is accused No.1 who is the main accused and since the offence is very serious this Court may not grant bail to the applicant. He submits that the role of the applicant and the role of other accused persons are different, as such the accused cannot claim parity. Accordingly, he prays for rejection of the present application.

9. I have perused the charge-sheet and the application.

10. In this case, F.I.R. was registered on 30/09/2019.

11. Thereafter, the applicant was absconding for about three years and accordingly, charge-sheet was filed under Section 299 of Cr.P.C.

12. There are statements of witnesses who have named the applicant. In the circumstances, *prima-facie*, it cannot be said that the applicant was not present at the spot or he is not involved in the alleged offence.

13. As far as the defence of the applicant that, he is not Mahatma Thakur, is a matter of trial.

14. Furthermore, in the case of Shera, there is a specific observation recorded by the learned trial Court that only one witness Imran Khan Salim Khan had disclosed the name of the said co-accused as one of the offenders and as no material was found to conclude that 'Shera' and 'Nilesh Makode' are the same persons, the bail was granted.

15. In the said backdrop, it cannot be said that the case of the applicant is similar with the case of the co-accused Shera.

16. The applicant was absconding for three years and was arrested.

17. Thus, considering the role attributed to the applicant in the alleged offence, the nature and seriousness of the offence, the material collected by the Investigating Officer during investigation, the severity of offence which conviction will entail, coupled with the fact that the applicant was absconding for three years, I am of the opinion that the applicant is not entitled for grant of bail. Accordingly, I pass the following order:

The application is **rejected**.

JUDGE