

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

Criminal Application (APPLN) No. 88 of 2022

Rekha Wd/o Ashok Kaushik

Versus

State of Maharashtra, through PSO, PS Ramnagar, Tah. & Dist. Gondia
and another

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

Court's or Judge's Order

Shri R.M.Pande, Advocate for the applicant.

Shri S.D.Sirpurkar, APP for the State / Non-applicant

Shri D.N.Mehta, Advocate for the non-applicant no.2.

CORAM : ANIL S. KILOR, J.

DATED : 21st NOVEMBER, 2022.

This is an application for cancellation of regular bail granted to the non-applicant no.2 by the Additional Sessions Judge-1, Gondia on 8th February, 2022 in connection with Crime No. 607 of 2021 for the offence punishable under Sections 302, 120(B) read with Section 34 of Indian Penal Code and under Sections 3-25, 27 of Arms Act.

2. I have heard learned counsel for the respective parties.

3. Shri Pande, learned counsel for the applicant submits that though in the say of the prosecution, five

offences were shown to show antecedents against the non-applicant no.2. However, while granting bail, the learned trial Court has not considered the same and without looking at the criminal antecedents of the non-applicant no.2, regular bail was granted. Accordingly, it is submitted that as the offence is serious, learned trial Court ought not to have granted bail. Hence, he prays for cancellation of regular bail granted to the non-applicant no.2.

4. On the other hand, learned Additional Public Prosecutor supports the case of the applicant. Whereas, learned counsel for the non-applicant no.2 supports the order of granting regular bail to the non-applicant no.2.

5. I have perused the application and the documents filed alongwith the same and the order of the trial Court granting regular bail to the non-applicant no.2.

6. The reasons recorded by the learned trial Court while granting bail to the non-applicant no.2 are as under:

8. Perusal of report goes to show that it was lodged by Rekha Kaushik, (wife of deceased) against unknown person. The wheels of investigation were set in motion and during the course of investigation accused Nos. 1 & 2 were arrested. Later on it revealed that, accused No.3 hatched criminal conspiracy and

gave contract (supari) to kill deceased to accused No.1. It is claimed that the pistol used in the offence was supplied by applicant.

9. It is nowhere claimed by the prosecution that applicant was part of the criminal conspiracy. On the contrary only offence u/sec.3/25 & 3/27 of the Arms Act is applied to him. Even it is not the case of the prosecution that the pistol was sold with the sole aim of killing the deceased. On the contrary as per the prosecution and statements of witnesses Prakash and Somesh recorded under Section 164 of Code of Criminal Procedure that accused no.1 purchased the pistol from applicant one and half year back just to scare her girlfriend who ditched him. Therefore, at this juncture, there is no role of applicant selling pistol for committing murder of the deceased. As discussed above even prosecution is not claiming that so.

10. Applicant was arrested on 07-09-2021 and since then he is languishing in the jail. Admittedly, applicant is having criminal antecedents as seen from the say filed by the I.O, however, neither of the same are triable by the Court of Sessions. The alleged offence registered against him are under sec.323, 324, 392 of IPC and Gambling Act. Hence, the offences are not serious and they are sub-judice before the Court and in no any case he is convicted. As rightly argued by Adv. Shaikh that the alleged offences registered against the applicant were long back and no fresh offences is registered against him. Applicant and the informant/intervener are not knowing each other, therefore, question of threatening her or other prosecution witnesses does not arise. Therefore, I am of the view that applicant is entitled for bail with conditions.

7. From the chargesheet, it has come on record that the non-applicant no.2 sold the pistol which

was used in the present offence, one and half years before the alleged incident and there is nothing to suggest that it was sold by the non-applicant no.2 to the accused no.1 for killing the deceased. Therefore, considering the material collected by the Investigating Officer during the investigation *prima facie* nothing is found against the non-applicant no.2, except the above referred material.

8. As far as the conspiracy and involvement of the non-applicant no.2 in the alleged offence is concerned, except the fact that he sold the pistol to the accused no.1 which was used by him in the alleged offence, no other incriminating material is there against the non-applicant no.2.

9. In the circumstances, only because the criminal antecedents were not taken into consideration by the learned trial Court while granting regular bail to the non-applicant no.2, cannot be the ground for cancellation of bail. Hence, in absence of any ground for cancellation of regular bail, I am not inclined to allow the present application. Accordingly, I pass the following order.

i. Criminal application is rejected.

SACHINDANAND
K NAIR

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by
SACHINDANAND
K NAIR
Date: 2022.11.23
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[ANIL S. KILOR, J.]