

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 982 OF 2022

(Chandan Singh s/o Shitalprasad Singh Vs. State of Maharashtra, thr. PSO, Rajura,
Dist. Chandrapur)

Shri Shashank Manohar, Advocate a/w. Shri Atharva Manohar, Advocate for
the applicant.

Shri A.R. Chutke, APP for the State.

CORAM : **ANIL S. KILOR, J.**
DATED : **14th September, 2022**

1. Heard.

2. The applicant has approached to this Court by filing the present application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.51 of 2021 registered with Police Station : Rajura, District : Chandrapur, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 7 and 27 of the Arms Act.

3. The prosecution story in brief is that the complainant received information from one of his workers that someone had shot his uncle Raju Yadav at a barber shop. It is alleged that the applicant had previous

enmity with the deceased, and therefore, he suspected that the applicant was involved in the murder. Accordingly, the FIR was registered against the applicant and one co-accused.

4. Shri Shashank Manohar, learned counsel for the applicant submits that the applicant has been falsely implicated in the alleged offence. He submits that the applicant is no way connected with the alleged offence.

5. The learned counsel for the applicant argues that the alleged incident took place on 31.01.2021 between 18.00 to 18.30 hours, whereas, the First Information Report (FIR) came to be lodged on 01.02.2021 at 02.02 hours. He submits that the delay in lodgment of the FIR is unexplained even though it is significant in light of the prosecution story that at the time of incident, the police patrolling party was at Naka No.3 i.e. close to the spot of occurrence and they chased the accused persons but could not catch them. To fortify his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Thulia Kali Vs. State of Tamilnadu*, reported in (1972) 3 SCC 393.

6. It is submitted that none of the witnesses have named the applicant or gave any description of the accused persons. It is pointed out that on the basis of the description of cloths alleged to have been worn by the accused persons at the time of the incident, the applicant was arrested on suspicion.

7. He further argues that as per the prosecution case the applicant was apprehended with the pistol and thereafter, another pistol, was recovered under Section 27 of the Indian Evidence Act. It is argued that it is absurd and improbable that the accused would hide one out of two alleged weapons of the offence and keep another one with him.

8. It is further pointed out that the second pistol has been recovered from the area accessible to all. Thus, according to the learned counsel for the applicant, the recovery is of no value.

9. It is pointed out that no Identification Parade was conducted. It is thus, submitted that the prosecution story is nothing but a created one and in the said backdrop, keeping the applicant in jail for uncertain

period, after filing of the charge sheet, is nothing but pre-trial punishment.

10. The learned counsel for the applicant further submits that there are two accused including the applicant against whom present FIR came to be registered. It is further submits that the co-accused has been released on bail, as such the applicant is entitled for grant of bail on the principle of parity.

11. The learned counsel for the applicant further submits that for all the panchnamas, including the inquest panchnama, discovery panchanama and other panchnamas, panchas are same. It is submitted that it creates doubt about veracity of the panchnamas. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India, in the case of *State of Haryana Vs. Ram Singh*, reported in AIR 2002 SC 620.

12. On the other hand, the learned APP strongly opposes the application and submits that sufficient incriminating material and

evidence is collected by the Investigating Officer to show the involvement of the applicant in the alleged offence.

13. He has further pointed out that CCTV footage has been collected and the statements of the witnesses were recorded by the Investigating Officer, which sufficiently show the involvement of the applicant in the alleged offence.

14. It is pointed out that there are criminal antecedents against the applicant and, therefore, there is every possibility that if the applicant is released on bail, he may commit the similar offence. He further submits that as the offence is serious and looking at the severity of punishment, this Court may not grant bail to the applicant.

15. In the backdrop of the submissions of the both the parties, I have perused the charge sheet and the application.

16. From the charge sheet and particularly, from the statements of the patrolling party, it is evident that on the date of the incident, the patrolling party was very close to the spot of occurrence and immediately

after hearing sound of firing, they reached the spot and chased the accused persons. Thus, it is further evident that the police got knowledge of the incident immediately on occurrence of the same.

17. In the said backdrop, it is pertinent to note that the incident had occurred on 31.01.2021 between 18.00 to 18.30 hours and the FIR came to be registered on 01.02.2021 at 02.02 hours. Thus, there is a delay in lodgment of FIR, which has not been explained.

18. The Hon'ble Supreme Court of India in the case of Thulia Kali Vs. State of Tamilnadu (supra), has observed that, the delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, the report only gets bereft of the advantage of spontaneity, danger creeps in of the introduction on coloured version, exaggerated account or concocted story as a result of deliberation and consultation. The Apex Court therefore, further observed that it is an essential that the delay in lodgment of the FIR should be satisfactorily explained.

19. In this case, there is not delay only in lodgment of the FIR, but even in recording the statements of the witnesses. The statements of members of patrolling party namely Assistant Police Inspector, Sunil Gajanan Zurmure was recorded on 06.02.2021 i.e. after six days, whereas, the statements of the police constables, driver and all other staff, were recorded between 08.02.2021 to 10.02.2021 i.e. after 8 to 10 days of incidence.

20. The offence was registered with the police station, Rajura and the above referred witnesses were/are attached to the same police station. Despite the said fact, there is a delay of more than six days in recording their statements.

21. From the charge sheet, it can be seen that the applicant was arrested on the basis of his cloths. Whereas, no Identification Parade was conducted. The prosecution story says that both the accused had covered their faces by scarp. Thus, nobody could see their faces. In the said backdrop, only on the basis of the cloths, the applicant came to be arraigned as accused. However, it appears that no attempt was made by

Investigating Agency to show the cloths alleged to have been worn by the applicant, to the alleged eye witnesses.

22. Moreover, panchnamas of CCTV footage show that police were chasing two persons but *prima facie* it cannot be said that they are accused Nos.1 and 2. Therefore, at this stage it cannot be said that the said evidence is sufficient to say anything about involvement of the applicant and co-accused.

23. One panch witness namely Anil Aasampelli is panch No.2 to spot panchnama, recovery panchnama, inquest panchnama, CCTV panchnama, search panchnama and handwash panchnama. The Hon'ble Supreme Court of India, in the case of *State of Haryana Vs. Ram Singh (supra)*, has observed that it creates doubt or suspicion as to whether the same has been tailor-made or not and in the event of there being such a doubt, the benefit must and ought to be transposed to the accused persons.

24. In this case, the second panch is also the panch to the spot panchnama, seizure of cloths and vehicle panchnama etc. Thus it creates doubt that whether panchnamas are tailor-made or not.

25. This Court has granted bail to the co-accused Satyendra Singh vide order order 24.09.2021 by recording reasons. In this case, the investigation is completed and the charge sheet has been filed.

26. In the above backdrop, as the applicant is in jail from last 18 months and considering the fact that there is no direct evidence about the involvement of the applicant in the alleged offence, keeping the applicant in jail for uncertain period when there is no possibility that in near future the trial will commence, it would amount to pre-trial punishment. Thus, I am of the opinion that the applicant is entitled for bail. 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.51 of 2021 dated 01.02.2021 registered with Police Station : Rajura, District : Chandrapur, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code and Sections 7 and 27 of

the Arms Act, on his furnishing P.R. Bond of Rs.25,000/- with a solvent surety in the like amount.

iii) The applicant shall attend the concerned police station on 1st and 16th day of each month, between 10.00 am to 12.00 noon, till culmination of trial.

iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.

v) The applicant shall not leave the jurisdiction of the concerned police station without permission of the Court.

vi) Liberty is granted to the State to apply for cancellation of bail, in case, the applicant breaches any of the conditions or commits similar or any other offence.

The application is **disposed of** accordingly.

(ANIL S. KILOR, J)

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