

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

CRIMINAL APPLICATION (BA) NO.18/2023

Swapnil s/o Hari Tripathi .vs. State of Maharashtra through its PSO P.S.
Yashodharanagar, Nagpur.

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

Court's or Judge's orders

Mr. S. N. Bawangade, Advocate for applicant.
Mr. I. Damle, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 3, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short the "Code"). The applicant has been arrested on 14.11.2022 in Crime No.645/2022, registered with Police Station Yashodharanagar, Nagpur, for the offences punishable under Section 394 read with Section 34 of the Indian Penal Code.

2. The First Information Report has been lodged on 13.11.2022 by Cashier of Sunrise Petrol Pump stating therein that in the intervening night of 12.11.2022 and 13.11.2022 at about 01.30 to 02.00 a.m., one white vehicle like Xylo came to the petrol pump. Four persons got down from the vehicle. They were aged about 30 to 35 years. They looted from the informant an amount of Rs.49,313/- so also two mobile phones worth Rs.1100/-. The vehicle went towards Kamptee. Accordingly, the FIR was lodged against four unknown persons. During the course of investigation, it transpired that two persons were sitting in the car and only four got down. One of the persons

sitting in the car is said to be the applicant. He has been arrested from his residence at Jabalpur, Madhya Pradesh.

3. The learned A.P.P. submits that one white vehicle passed through Mansar Toll Plaza at about 02.30 a.m. on 13.11.2022. The vehicle was without number plate. He submits on instructions that the CCTV footage was seen by one of the police officials and on seeing that one vehicle without number plate has passed through toll plaza, the investigating agency suspected involvement of the vehicle in crime. They obtained registration number of the vehicle on the basis of the Fastag by which toll was deducted. The investigating agency contacted the owner of the vehicle, who informed that the vehicle was mortgaged with the applicant. Accordingly, the investigating agency went to Jabalpur and apprehended the applicant on 14.11.2022.

4. The investigation further indicates that the applicant along with five persons had stayed in Hotel Shivraj Deluxe, Central Avenue, Nagpur on 12.11.2022. They left the hotel at 01:00 a.m. on 13.11.2022. Five persons who stayed with the applicant at the hotel have criminal antecedents. The applicant however has no criminal antecedents. The learned A.P.P. submits that other five persons are absconding. Those five persons remain unidentified. The applicant has not been identified by the informant or any other witness. In fact, the applicant has not been subjected to test identification parade. Learned A.P.P. submits that the informant has not seen the applicant and that therefore he (the applicant) has not been subjected to test

identification parade. If this is true, the prosecution has a huge task to prove complicity of the applicant with the crime.

5. Learned A.P.P. on instructions submits that it is the applicant who has confessed his role in the crime so also of others. If that be so, it is the duty of the investigating officer to collect evidence on the basis of information so received/obtained by him during interrogation. The investigating officer must be aware that confession by the accused before the police officer is not admissible in terms of Section 25 of the Indian Evidence Act.

6. Thus, as of now, there is absolutely no evidence against the applicant. There are no criminal antecedents against him. He resides in own house. Thus, he has immovable property, though in Madhya Pradesh. In the circumstances, no purpose would be served by putting the applicant behind the bars. Interest of the prosecution can be secured by putting the applicant to appropriate terms.

7. The observations made in this order are prima facie in nature and are made for deciding the present application only.

8. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Swapnil s/o Hari Tripathi, be released on bail in Crime No.645/2022, registered with Police Station Yashodharanagar, Nagpur, for the offences punishable under

Section 394 read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station, Yashodharanagar, Nagpur on first Sunday of every month between 01:00 p.m. to 03:00 p.m., till filing of the charge-sheet.

(iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.

(vii) The applicant shall maintain law and order.

(viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

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