

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

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CRIMINAL APPLICATION (BA) NO. 73/2023

Akshay Dipak Lande

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Darwaha Dist Yavatmal

.. Respondent

.....
Mr. R.M.Daga, Advocate for the applicant

Mr.A.M. Kadukar, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 20th February, 2023.

PC:

Heard both sides.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 21.10.2022 in Crime No. 858/2022 for the offences punishable under Sections 302, 307, 323, 336, 201, 120B read with Section 34 of the Indian Penal Code and Sections 3, 25 and 27 of the Arms Act and Section 135 of the Maharashtra Police Act, registered at Police Station Darwaha, Dist. Yavatmal.

3. It appears that there are in all seven accused. The accusation against them is that they have killed one Sandip Tote by means of fire-arm. The direct evidence indicates only the involvement of accused No.1, namely, Om Dudhe. In fact, the FIR itself indicates his involvement in the crime. The FIR has been lodged by the mother of the deceased. The FIR narrates that there is an old enmity between the informant's son and the accused no.1-Om and his brother Sandip. It appears that four years back,

Sandip has killed the brother of the accused no.1. The present crime has been committed in retaliation to the earlier crime. The informant states that on 30th September 2022 when she, her son Sandip and her daughter Seema were proceeding towards the court, the accused no.1 along with two unknown persons approached Sandip and pointed revolver against Sandip. The informant and others started running away. At that time, accused no.1 fired a bullet. As a result Sandip fell down. The informant saw that he person accompanying the accused no.1 who was holding sickle (*Koyta*), has also inflicted multiple blows of sickle (*Koyta*) on the neck of Sandip. The informant and her daughter intervened but they too were assaulted. The informant has therefore blamed the accused no.1 and two unknown persons for the assault.

4. Thus, the evidence against the accused no.1 is writ large. However, the learned APP could not point out any admissible evidence against the present applicant. He submits that accused no.1 has disclosed the involvement of the applicant. The disclosure finds place in the memorandum *panchnama* recorded u/s 27 of the Indian Evidence Act. It appears that the accused no.1 has disclosed to the police that revolver used in the crime has been procured from the applicant for Rs.30,000/-. The amount was transferred in the account of the applicant. The revolver used in the crime has been recovered at the instance of accused no.1.

5. The learned counsel for the applicant has rightly argued that the confession made u/s 27 of the Evidence Act is admissible only to the extent of disclosure which relates distinctly to the crime. The confession indicating involvement of the co-accused is not admissible u/s 27. The Investigating officer was duty bound to collect evidence in support of

such disclosure. He could have interrogated the applicant and obtained the source of procurement of the revolver and could have recorded the statement of the person who has allegedly sold or given revolver to the accused no.1. There are other means as well to find out the truth. However the I.O. thought it proper to collect the bank statement to show that an amount of Rs. 30,000/- was transferred in the account of the applicant. That by itself will not be sufficient to show the complicity of the applicant with the crime.

6. The learned APP has contended that the I.O. has collected CDR details to show that the applicant and accused no.1 were in contact with each other. That evidence will be hardly of any assistance. The call data record will only indicate that there were phone calls between the two mobile numbers.

7. The applicant is behind the bars since 21.10.2022. The charge-sheet has been filed. The charge has not yet been framed and it will take some time to commence and conclude the trial. When enquired, learned Advocate for the applicant states that there are no criminal antecedents against the applicant. He is residing at the address given for last many years. In view of the above and considering the nature of evidence against the applicant, I am of the view that no fruitful purpose will be served by keeping him behind the bars.

7. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

8. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Akshay Dipak Lande, be released on bail, in connection with Crime No. 858/2022 registered with Police Station Darwaha Dist. Yavatmal for the offences punishable under Sections 302, 307, 323, 336, 201, 120B read with Section 34 of the Indian Penal Code and Sections 3,25 and 27 of the Arms Act and Section 135 of the Maharashtra Police Act, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one surety in the like amount.
- (iii) 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.
- (iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (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 from disclosing such facts to the Court or any Police Officer.
- (vi) The applicant shall maintain law and order.
- (vii) 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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