

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

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CRIMINAL APPLICATION (BA) NO. 214/2023

Abhishek Tanaji Jagtap

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Ramdaspath, Akola

.. Respondent

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Mr. Anil Mardikar, Sr.Counsel a/by Mr. A.M.Tirukh, Advocate for the
applicant

Mr.S.S Doifode, APP for Respondent-State

Mr S.V. Sirpurkar, Advocate (assist to prosecution/ informant)

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CORAM: ANIL L. PANSARE, J.

DATED : 30th March, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 24.11.2022 in Crime No.640/2022 registered at Police Station Ramdaspath, Akola, for the offences punishable under Sections 302, 102B, 34 of the Indian Penal Code.

2. Having heard both sides at length and having gone through the entire material on record, it appears that in all seven persons have been accused of committing the murder of one Vishal Kaple. Accused No.1-Shiva Dorvekar has assaulted the deceased by means of knife, whereas the accused No.2-Vinod Kamble by means of fist blows on 30th October, 2022. The applicant is said to have conspired to eliminate Vishal.

3. Mr. Anil Mardikar, learned senior counsel as also Mr. Doifode, learned APP and Mr Sirpurkar, learned counsel for the informant have relied upon the statements of three witnesses in support of their rival contentions.

4. The names of these witnesses are : (1) Vijay Dawande, (2) Kashinath Bagde and (3) Vaibhav Bhatkar. Their statements indicate that that on 14th October, 2022 the witness Kashinath along with Vishal and 5/6 persons have lodged a complaint with the Excise Department about illegal business of liquor which, according to them, was causing nuisance and trouble for the residents. These persons made a request to take action against the erring persons in order to stop the business. Accordingly, the Excise Department swung into action and the persons involved in the sale of illegal liquor were made to get on their back foot. The action by the Excise Department, appears to have been reported in the local newspaper and through the news published, the accused persons came to know about the complainants. On 20th October, 2022, one of the accused, namely, Rohan Ingle who is involved in the illegal sale of liquor, stopped Kashinath (witness). At that time, Rohan was accompanied with one person. They abused the witness on the ground that because of the complaint, their business has come to a standstill. The witness was then taken to Om Dabha and thereafter to the house of Vishal Kaple. These two persons then threatened the mother and other relatives of Vishal and instructed them to advise Vishal appropriately so that he will not make such a complaint in future. The witness was taken to the *Dhaba* where the applicant was called. They have allegedly abused the witness. They have threatened the witness so also Vishal to withdraw the complaint else to face life threatening consequences. On 30th October,

2022 Vishal was eliminated. The accused Nos.1 and 2 in furtherance of the conspiracy hatched by all the accused have allegedly assaulted Vishal by means of knife and fist blows, as stated above.

5. As such, the FIR came to be lodged against the accused Nos. 1 and 2. However, the involvement of the applicant and co-accused has been revealed during investigation. The statement of the witnesses referred to above, is taken aid of by learned APP to contend that the evidence is writ large on the point of the conspiracy. On 20th October 2022 and 29th October 2022 the applicant and others have threatened the witnesses and Vishal for having lodged complaint against the illegal liquor business.

6. Having given thoughtful consideration to the statements of the witnesses, what transpires is that the applicant and others were aggrieved by the complaint made by the witnesses to the Excise Department of illegal selling of liquor in villages Mothi Umri and Gudadhi. The record shows that the written complaint was made by Kashinath Bagde by issuing letter dated 11th October, 2022 in favour of the State Excise Department. The prosecution, however, claims that Vishal Kaple was instrumental in causing raids in hotels and *Dhabas*. The accused have therefore threatened Vishal and the witnesses of dire consequences. However, the first witness- Vijay Dawande has in the concluding paragraph stated that Shiva, Vinod, Govardhan, Ashwin and Rohan and Balu and the applicant might have been involved in the crime. Thus, he was not sure of involvement of the applicant. The second witness- Kashinath in the concluding paragraph blames Rohan, Balu and Ashwin for the conspiracy and Shiva and Vinod for actual

assault. The name of the applicant is absent. The third witness Vaibhav though has referred to the incident dated 29th October, 2022 wherein the accused persons except the accused Nos. 1 and 2 have threatened the witness of dire consequences, has while describing the incident of 30th October, 2022 blamed only accused nos.1 and 2. The third witness does not blame the applicant for the conspiracy conspiracy or for the murder.

7. Thus, the complaint was made by Kashinath Bagde stating therein that in some *Dhabas*, foreign liquor and country liquor are illegally sold and that the business of the hotel owners with valid permit is being adversely affected. The name of the applicant or his *Dhaba* is not mentioned. The learned APP has not pointed out statement of any witness to show that the applicant was illegally selling liquor at his *Dhaba*. The statements of witnesses indicate that the applicant and co-accused were aggrieved by the complaint. They have not stated in categorical terms that applicant was selling illegal liquor. The prosecution ought to have collected the evidence in the form of statement or otherwise, that the applicant was involved in illegal sale of liquor. That apart, it is difficult to understand as to why the accused have chosen only Vishal for elimination when the complaint was lodged by Kashinath Bagde and that the witnesses were also a part of the complaint.

8. Another ground raised by the learned APP is that there are criminal antecedents against the applicant. The chart has been annexed, which indicates that as many as five cases are pending against the applicant. The learned Senior Counsel however submits that one out of five cases is the present case. So far as the other four cases are

concerned, the applicant has been acquitted in three cases. Thus, according to him, there is only one case pending against him for the offence punishable u/s 324 read with Sec.34 of IPC.

9. Thus, the prosecution has unnecessarily relied on the crime chart which does not reflect correct status of criminal antecedents. There is absolutely no justification for the I.O. to rely upon the cases in which the applicant has been acquitted nor is there any jurisdiction to refer to the present case as an antecedent. This approach of the I.O is deprecated. Needless to mention that it is well settled by now that the Investigating agency should act as a neutral agency and, therefore, should put forth the true and correct status of the facts so also the attending circumstances that would affect the decision making process. Thus, only on the basis of pendency of one case, the relief cannot be denied to the applicant.

10. The statement of witnesses may support the theory of suspicion of involvement of the applicant but to convert suspicion into proof, the prosecution has a challenging task during the trial. The accusation being serious, the evidence will have to be of higher degree. Nonetheless, the prosecution will get the opportunity during the trial to show complicity of the applicant with the crime. The applicant will suffer the consequence if the conspiracy is proved. However, in the absence of link between the applicant and the assailants *viz.* accused Nos. 1 and 2 coupled with the absence of name of the applicant in the concluding paragraphs of these witnesses would be advantageous to the applicant, at least, for the purpose of releasing him on bail.

11. The charge-sheet has been filed. The charge has not yet been framed. It will take some time to commence and conclude the trial.

12. In the circumstances and considering the nature of evidence against the applicant, as also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view, no fruitful purpose will be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

13. 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.

14. Hence, the following order :

ORDER

(i) The Application is allowed.

(ii) The applicant- Abhishek Tanaji Jagtap, be released on bail, in Crime No. 640/2022 registered at Police Station Ramdaspath Akola, for the offences punishable under Sections 302, 102B, 34 of the Indian Penal Code, on he furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty thousand) with one or two sureties 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 mobile number(s) and 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) The applicant shall surrender his passport before the Investigating Officer within a period of one week from today. If he does not possess any passport, he shall file an affidavit to that effect.

(viii) In case of breach of any condition, 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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