

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

...

CRIMINAL APPLICATION (BA) NO. 269/2023

Chandrashekhar Nagorao Kanake

.. Applicant

versus

The State of Maharashtra

Th: Its PS Wani Tq. Wani Dist. Yavatmal

.. Respondent

.....
Mr. S, M. Lodha, Advocate for the applicant

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

CORAM: ANIL L. PANSARE, J.

DATED : 17th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 08.06.2022 in Crime No. 415/2022 registered with Police Station, Wani Tq. Wani, District Yavatmal for the offences punishable under Section 332, 353 and 395 of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that a total of eight persons have committed theft at the premises of Western Coalfields (Open Cast mine), Ghonsa. The FIR indicates that in the intervening night of 6th and 7th June, 2022, four persons were found loitering suspiciously. The informant, who was working as Security Guard at the relevant time, has informed his colleagues about such movements. Four persons assaulted the informant by means of handle of axe and flat side of the sword. They have snatched mobile from his pocket. The informant has then seen these persons taking 50 meter motor-cable wire. Thereafter the accused persons were running towards the jungle. At

that time, the patrolling vehicle and other employees rushed in. One of the accused fell down. He was apprehended at the spot. He then disclosed the names of his five associates. He however showed his inability to name the other three persons. The applicant's name has been disclosed.

3. The learned counsel for the applicant submits that though the name of the applicant has been disclosed, he is not known to informant. The applicant has not been subjected to the test identification parade. This fact is admitted by the learned APP. However he submits that the informant had ample time to see the faces of the assailants and that therefore the informant should be given an opportunity to identify the assailants during the trial.

4. The learned APP is correct to the extent that the informant will have an opportunity to identify the assailants during the trial. However there appears no justification for the Investigating officer to not conduct the test identification parade, particularly when the assailants were not known to the informant and offence has been committed in the midnight. These lapses will be advantageous to the applicant, at least for the purpose of securing bail. The prosecution will get the opportunity to put forth its version which will be tested by the defence in the cross-examination. However, at this stage, considering the nature of evidence, it will not be proper to continue incarceration of the applicant.

5. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long. The charge-sheet has been

filed. The charge is not yet framed. It will take time to commence and conclude the trial.

6. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected 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. The trial Court shall not get influenced by the observations made in this order.

8. Resultantly, following order is passed :-

ORDER

(i) The application is allowed.

(ii) Applicant – Chandrashekhar Nagorao Kanake, be released on bail in Crime No. 415/2022 registered with Police Station, Wani Tq.Wani District Yavatmal, for the offences punishable under Section 332, 353 and 395 of the Indian Penal Code, on he executing PR. 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 same till the final disposal of the case.

(iv) 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.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences. The applicant shall not seek adjournment, except under extreme circumstances to the satisfaction of the trial Court.

(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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