

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

CRIMINAL APPLICATION (BA) NO.273 OF 2023

Vijayshankar s/o Bhaiyalal Tarone

Vs.

State of Maharashtra, through PSO, PS Ramnagar, Dist. Gondia

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

Court's or Judge's orders.

Shri A.S. Manohar, Advocate for applicant.

Shri A.M. Kadukar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JULY 03, 2023.

The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.15/2022 registered with Police Station, Ramnagar, District Gondia for the offences punishable under Sections 307 and 120B of the Indian Penal Code, 1860 and Sections 3, 25 and 27 of the Arms Act, 1959. The applicant is arrested on 30.01.2022.

2. The crime is registered on the basis of report lodged by the informant/injured Dhanendra Shivram Bhurle on an allegation that there was a property dispute between one Santurao, a friend of the informant, and the accused nos.1 and 2. The accused nos.1 and 2 have threatened the informant and said Santurao. On 28.01.2022 at around 5.30 pm, two unknown persons had accosted the informant while he was traveling on his motorcycle and had fired bullet at him heating him at the cheek. Due to which, he sustained

injuries. On the basis of such report, the crime is registered.

3. As per the contention of the applicant that he is not named in the FIR only material available against him is the identification parade, which is held after three months of the alleged incident. As far as his involvement as a rider of the motorcycle is concerned, no statement of any of the witnesses is recorded to show his role. Now investigation is completed and charge-sheet is filed. His further custody is not required and hence he be released on bail.

4. The said application is strongly opposed by the State on the ground that the investigating officer has recorded the statement of one Maniram Gajbe, who has specifically stated that on the day of the incident in the morning the applicant has taken the mobile number of the informant from the said witness and thereafter prior to the incident the applicant and other accused persons have talked on phone with the informant and enquired his whereabouts. It further shows that the informant informed him that he is in the field and proceeding towards house. Thereafter, the accused persons have followed him and fired the gun. It is further contention of the State that from the investigation papers it reveals that the present applicant is involved with crime. There are criminal antecedents against him as there are offences registered against him. If he is released on bail, there is likelihood that he will commit similar type of offences and prays for rejection of the bail.

5. Heard learned counsel for the applicant Shri A.S. Manohar. He reiterated the contentions that except the Test Identification parade there is no material against the present applicant to connect with the alleged offence. Said Test Identification parade is also held after three months of the incident. There is absolutely no *prima facie* material against the present applicant. Now investigation is completed. Merely because the criminal cases registered against him is not sufficient to reject his bail application. Considering that no *prima facie* material is available to connect the present applicant, he be released on bail.

6. At the same time, learned APP Shri A.M. Kadukar vehemently submitted that the statement of one Maniram Gajbe is sufficient to show the involvement of the present applicant with the alleged offence. There are criminal antecedents and considering that there is likelihood that if the applicant is released on bail he will be involved in similar type of the offence. Hence, application deserves to be rejected.

7. Having heard both the sides and on perusal of the investigation papers, admittedly, name of the present applicant is not mentioned in the FIR. Admittedly, there are no eye witnesses to the alleged incident. The Test Identification parade in which injured has identified the present applicant but his supplementary statement is not recorded to show the role of the present applicant.

Moreover, the said Test Identification parade is held after three months. As far as the statement of Maniram Gajbe is concerned, he also nowhere stated the name of the present applicant to show that the present applicant has called him and enquired about the whereabouts of the informant. As per statement of Maniram Gajbe, he has received a phone call of the present applicant. The CDR report shows that the said phone call was received by him at about 5:25 and 5:29 pm. The tower location shows his location at Fulchar Naka, near Eakdip Complex, Gondia whereas the alleged incident has taken between Temni and Katangi near Maharaj Dhaba. The statements of the witnesses nowhere show that the applicant was present and was riding the motorcycle at the relevant time. Even considered the material against the present applicant, considering that now the investigation is completed and charge-sheet is filed. No purpose will be served by keeping the applicant behind the bars. The other co-accused nos.1,2 and 4 are already released on bail, who were involved in the conspiracy.

8. Considering the role attributed to the present applicant and the material collected during the investigation, shows that only the material available is the Test Identification parade and the statement of said Maniram Gajbe as well as the CDR report. There is no material that the present applicant was present at the spot of the incident and was riding the motorcycle at the relevant time. Therefore, the present application deserves to be allowed by

imposing certain conditions. Accordingly, I proceed to pass following order:

ORDER

- i. The criminal application is allowed.
- ii. The applicant - Vijayshankar S/o Bhaiyalal Tarone, be released on bail in connection with Crime No.15/2022 registered with Police Station, Ramnagar, District Gondia for the offences punishable under Sections 307 and 120B of the Indian Penal Code, 1860 and Sections 3, 25 and 27 of the Arms Act, 1959, on he executing PR bond in the sum of ₹25,000/- with one surety in the like amount.
- iii. The applicant shall attend the Police Station, Ramnagar, Gondia once in a week i.e. on every Sunday between 10.00 a.m. to 1.00 p.m. till conclusion of the trial.
- iv. The applicant shall not leave territorial jurisdiction of Gondia District without prior permission of the Court, till culmination of the trial.
- v. The applicant shall not involve in any other crime.
- vi. The applicant shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

With this, the application is disposed of.

JUDGE

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