

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

CRIMINAL APPLICATION (BA) NO.342/2023
Dnyaneshwar s/o Pandurang Wankhade

..VS..

State of Mah., thr.PSO PS Ramdaspath, Akola, Tahsil and District Akola

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

Court's or Judge's Order

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Shri Anil Mardikar, Senior Counsel with Shri N.R.Tekade, Counsel
for the Applicant.
Shri S.V.Sirpurkar, Counsel for the Complainant.
Shri I.J.Damle, Addl.P.P. for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/06/2023
PRONOUNCED ON : 15/06/2023

1. The present application is filed by the applicant/accused for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.640/2022 registered with Ramdaspath Police Station, Akola for offences punishable under Sections 302 and 120-B read with Section 34 of the Indian Penal Code.

2. The applicant/accused is arrested on 24.11.2022 and since then is in jail.

3. The crime is registered on the basis of report lodged by Rahul Nagorao Dhaye on an allegation that on the date of incident he witnessed at Jatharpeth square that two persons namely Shiva Darvekar and Vinod Kamble were running towards

Ganesh Sweet Mart and he saw that one person is lying in front of a furniture shop in a pool of blood and the said person was Vishal Kaple. He took the injured in the hospital, however he was declared dead. During investigation, it revealed that in all 7 persons have been accused of committing the murder of said Vishal Kaple and the present applicant is said to have conspired to eliminate the deceased. On the basis of the said allegations, the applicant/accused is arrested.

4. As per the contentions of the applicant/accused, he has nothing to do with the alleged incident. The only role attributed to him is that he conspired to kill the deceased. In fact, no material is collected during investigation to show that he was part of the conspiracy. Now, investigation is completed and chargesheet is filed. Co-accused Abhishek Tanaji Jagtap, against whom similar allegations are made, is already released on bail. Hence, he be released on bail on the ground of parity.

5. The said application is strongly opposed by the State on the ground that *prima facie* material collected during investigation sufficiently shows the involvement of the applicant/accused. Hence, the application deserves to be rejected.

6. Heard learned senior counsel Shri Anil S.Mardikar for the applicant/accused and learned Additional Public Prosecutor Shri I.J.Damble for the State, and learned counsel Shri S.V.Sirpurkar for the informant.

7. Learned senior counsel Shri Anil Mardikar for the applicant/accused submitted that the only allegation against the applicant/accused is that prior to the incident he had been to the house of the deceased as the deceased has made a complaint against the persons who are dealing with illicit liquor. There is absolutely no material to show that he conspired with the co-accused to eliminate the deceased. Though the prosecution placed reliance on Call Data Records, the alleged incident has taken place on 31.10.2022 and the Call Data Records show the communication between the co-accused Shivanand and the present applicant on 2.9.2022. Thus, there is a long gap between the two incidents. As the co-accused with the similar allegation is already released on bail, on the ground of parity, the applicant/accused deserves to be released on bail.

8. Learned Additional Public Prosecutor Shri I.J.Damle for the State reiterated the contentions and submitted that

prima facie material sufficiently shows the involvement of the applicant/accused.

9. Learned counsel Shri S.V.Sirpurkar for the complainant endorsed the same contentions.

10. Perused the investigation papers. The statements of the witnesses namely Vijay Dawande, Kashinath Bagde, Vaibhav Bhatkar, and one Mayur Rahtod disclose on 14.10.2022 witness Kashinath along with Vishal and 5-6 persons lodged report with the Excise Department in respect of illegal business of liquor and requested to take an action against the persons involved. In response to the said complaint, the Excise Department took the action and the persons involved in the sale of illegal liquor were restrained to run the business. The said news reported in the newspaper and the accused persons came to know that the complaint is lodged by Kashinath. One of the accused namely Rohan Ingle was involved in the illegal sale of liquor. At the relevant time, he was accompanied by one person. They abused said Kashinath and taken him at Om Dhaba and, thereafter, at the house of Vishal Kaple, i.e. deceased. These two persons then threatened the mother and other relatives of Vishal. The witness was taken to the dhaba where the applicant was called. It is alleged that the applicant abused the witness

and threatened that he shall ask Vishal to withdraw the complaint otherwise to face consequences. On 30.10.2022, Vishal was eliminated.

11. The FIR is lodged against accused Shiva and Vinod. The involvement of the applicant has been revealed during investigation.

12. Learned Additional Public Prosecutor Shri I.J.Damle for the State submitted that the statements of the witnesses show the involvement of the applicant/accused in the alleged incident.

13. After going through statements of the relevant witnesses, the applicant/accused and other were aggrieved by the complaint made by the witnesses to the Excise Department of illegal selling of liquor in villages Mothiumari and Gudadhi. The record shows that written complaint was made by Kashinath Bagde by issuing letter dated 11.10.2022 to the State Excise Department. As per the prosecution, deceased Vishal has taken initiative in causing raids at hotels and dhabas and, therefore, the accused threatened Vishal and witnesses of dire consequences. As per the statement Vijay Dawande that co-accused Shiva, Vinod, Ashwin, Rohan, and the applicant have been involved in the crime. The second witness Kashinath also

claims that the applicant threatened him. The third witness Vaibhav also stated on the similar line. The complaint was made by Kashinath alleging that in some dhabas the illicit liquor is illegally sold. It is nowhere mentioned that the applicant is running any dhaba. The statements of witnesses indicate that the applicant was aggrieved by the said complaint. However, there is no statement to show that the applicant was selling illegal liquor. Thus, the prosecution relied upon the statements of the witnesses. Needless to mention here that only allegation against the present applicant is that he threatened that the deceased has to face consequences. He is not involved in the actual assault. The statement of witnesses may support the theory of involvement of the applicant, regarding the conspiracy and the role of the applicant depends upon the evidence adduced before the court. At this stage, the only allegation against the present applicant is that he threatened the deceased. The co-accused to whom similar role is assigned is already released on bail. Thus, the applicant is also entitled to be released on bail on the ground of parity.

14. In the circumstances and considering the nature of allegations against the applicant, no fruitful purpose will be served by keeping the applicant behind the bars. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is allowed.

(2) Applicant Dnyaneshwar s/o Pandurang Wankhade, be released on bail in connection with Crime No.640/2022 registered with Ramdaspeth Police Station, Akola for offences punishable under Section 302, 120-B read with Section 34 of the Indian Penal Code on his furnishing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(3) 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 final disposal of the case.

(4) The applicant shall regularly attend the court and cooperate the 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.

(5) 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.

(6) The applicant shall maintain law and order.

(7) 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.

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

The criminal application stands disposed of in the above terms.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!