

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

CRIMINAL APPLICATION (BA) NO. 1342 OF 2022

Niraj s/o Guruldas Wadhawani vs. The State of Maharashtra

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

Court's or Judge's Orders.

Mr. A. A. Naik, Advocate for applicant.
Mr. N. R. Rode, APP for respondent State.
Mr. H. P. Lingayat, Advocate to assist prosecution.

CORAM : ANIL L. PANSARE J.

DATE : 11/01/2023

Heard.

2. Bail application of the applicant has been rejected by the learned Sessions Court by assigning following reasons :-

“5. From the perusal of the FIR reveals that, informant was shot by two bike borne assailants i.e. accused Nos.3 & 5 and they threatened not to meddle in the matter of accused Nos.1 & 2. FIR came to be lodged and during investigation it revealed that, all accused hatched criminal conspiracy to eliminate informant who was power of attorney holder of one Shantikumari Rauthu. The said Rauthu had purchased plot on 19.05.2016, but accused No.1 had eye on the plot and put his board on it. When informant and Santosh Rauthu went

to the house of accused No.1, he threatened them and even accused No.2 and applicant threatened. It further reveals that, on 28.01.2022, accused Nos.3 & 5 fired from pistol when informant was returning from his field.

6. In investigation carried out by I.O, roles of accused were revealed. They were arrested. I.O. invoked stringent MCOC Act against all accused, however, record goes to show that, sanction was denied by the sanctioning authority. As per say of I.O, the main assailant is the bodyguard of applicant and on the day of incident they were in constant touch. The CDR and SDR are filed on record. Perusal of the same at this stage goes to show that, applicant was in constant touch with accused No.3. Thus, prima-facie at this stage from the report as well as the technical evidence, role of the applicant is made out. Applicant was present when Rauthu and informant were threatened not only by accused Nos.1 and 2 but by present applicant also. The threatening culminated in the murderous assault by firing which informant survived.

7. The investigation at this juncture points out involvement of the applicant. Previous bail application was rejected on merit by my predecessor. The say of I.O reveals that applicant is having criminal antecedent wherein an offence u/sec. 307 of IPC was registered against him. Even MCOC Act was applied, however, sanction was not received. In the case of Mohan (supra) the offence was registered under

Section 323, 294, 506 of IPC and under sec.3/4 of Dowry Prohibition Act which was triable by JMFC. While deciding the same, it was observed by the Hon'ble High Court that while deciding bail application, the Judge should not only read the allegations but is also required to see whether prima-facie offence is made out.

9. Though accused Nos.1 and 2 were released on bail by the Hon'ble High Court and orders are filed on record, however, the same will not help in any way to the applicant, because applicant is having criminal antecedent as similar offence u/sec. 307 of IPC was registered against him. In the case of Pundalik (supra) the offence was under Bombay Police Act and Section 324 of the IPC. Therefore, if applicant is released on bail and he being resident of Gondia, there is likelihood that he may threaten Rauthu, informant and other witnesses. APP and I.O raised concern about threatening and repetition of offence. The apprehension raised are genuine and possibility cannot be ruled out that applicant may threaten the informant."

3. The learned counsel for the applicant submits that the applicant has been acquitted for the offence punishable under Section 307 of the Indian Penal Code (IPC) earlier. Learned Sessions Court denied bail by stating that applicant has criminal antecedents. Learned counsel for the applicant submits that he has been acquitted in said case viz.

Sessions Trial No.52 of 2019 for the offence punishable under Section 307 read with Section 120-B of the IPC and Section 3, 25 and 27 of the Indian Arms Act, 1959 vide order dated 03/02/2021. Learned counsel for the applicant fairly submits that this fact was not disclosed before the learned Sessions Court and that therefore, the applicant has been denied benefit of parity.

4. My attention has been drawn to First Information Report (FIR) to contend that only two persons were blamed for the offence by stating that they had threatened the informant. Those two names were Uday Goplani and Ganesh Jadhav. It appears that the wife of one Santosh Ravtu is the owner of an immovable property with document of title. Mr.Goplani also claims to be owner of the said property. The informant is power of attorney holder of Mr.Ravtu. The root cause of dispute is the immovable property. The applicant is friend of Mr.Goplani. His name was not disclosed by the informant in the FIR. However, after about two months, when further statement of informant came to be recorded, the name of applicant surfaced. The role assigned to the applicant is that he gave life threats to the informant. The assailant Naresh Tarone is bodyguard of applicant.

5. Learned APP submits that call data record indicates that Naresh Tarone and applicant were in constant touch prior to and subsequent to the offence.

6. Mr. Naik, learned counsel for the applicant immediately responded that Naresh Tarone being bodyguard of the applicant, there is nothing wrong in they being in contact. The Investigating Agency, however, contends that the applicant has played a vital role.

7. The person Mr.Uday Goplani who appears to be the root cause of the dispute has been released on bail vide order dated 17/08/2022 in Criminal Application(BA)No.815 of 2022. The second person Mr.Ganesh Jadhav, who has been named in FIR has also been released on bail vide order dated 06/09/2022 passed by this Court in Criminal Application(BA)No.1027 of 2022. There is no reason to deny benefit of parity to the applicant. The learned Sessions Court has denied parity on the ground of criminal antecedents, which in fact could not have been considered, in view of the fact that the applicant has been acquitted in the said case. The charge-sheet has been filed. It will take some time to commence and conclude the trial. The applicant is

said to have strong roots in the locality as he owns immovable properties. In the circumstances, while granting benefit of parity, the applicant could be put to appropriate conditions. Hence the following order :-

ORDER

- i. The application is allowed.
- ii. The applicant, namely, Niraj s/o Guruldas Wadhawani, be released on bail in Crime No.15 of 2022 registered with Police Station Ram Nagar, District Gondia for the offences punishable under Sections 307 and 120-B of the Indian Penal Code and Section 3, 25 and 27 of the Indian Arms Act, 1959, on he furnishing PR Bond in the sum of Rs.25,000/- [Rupees Twenty Five Thousand only] with one solvent 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 adjournment, 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/her from disclosing such facts to the Court or any Police Officer.

vi. The applicant shall not play mischief with the evidence collected or yet to be collected by the Police.

vii. The applicant shall not enter the territorial jurisdiction of Gondia District without prior permission of the Court, till the trial is over.

viii. The applicant shall maintain law and order.

ix. The applicant shall surrender his passport, if any, before the Investigating Officer within a period of one week from today, and if he does not possess any passport, he shall file affidavit to that effect.

x. 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.

JUDGE