

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

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CRIMINAL APPLICATION (BA) NO. 1450/2022

Aman s/o Anand Andewar

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Ballarpur, Dist. Chandrapur.

.. Respondent

.....
Mr. Shashank Manohar, Advocate for the applicant

Mr. V.A. Thakre, APP for Respondent/state
.....

CORAM: ANIL L. PANSARE, J.

DATED : 16th January, 2023

PC:

Heard the learned counsel for the respective parties.

2. The applicant has filed present application under Section 439 of the Code of Criminal Procedure. He has been arrested in Crime No.520/2020 registered at Police Station Ballarshah, Dist. Chandrapur, for the offences punishable under sections 143, 147, 148, 149, 302, 120-B of the Indian Penal Code and Sections 4/24, 7, 27(3) of the Arms Act.

3. The FIR came to be lodged against as many as five persons, namely, (1) Aman Andewar (2) Pranay Saidal (3) Avinash Bobde (4) Alfred Anthony and (5) Badal Harne. The FIR has been lodged on the ground that there was an old enmity between the two gangs.

4. The accusation against the applicant-Aman is that at his instance, a member of the rival group, namely Suraj, has been murdered on 08.08.2020. The informant-Sajid is the friend of the deceased. It is

the case of the prosecution that the informant and Rahul were accompanying the deceased-Suraj. On the day of the incident, the informant had parked his Car bearing registration No. MH-34/AM 1958 in front of Arabic Hotel at Ballarpur. The informant heard voice of sudden shooting and saw accused-Pranay and accused-Alfred near the driver door of the Car. Both these accused were sitting on the Pulser motorcycle. Alfred was holding a gun in his hand. He fired 4-5 rounds at Suraj. At that time, the informant and Rahul picked up stones and pelted towards Alfred. It is then alleged that Alfred fired in the air and both the assailants ran away. At that time, the applicant-Aman along with Avinash and Badal came over there on the motorcycle. The informant heard Aman saying, "Lets us run away; Suraj has died". Aman and Badal then took to their heels. Suraj was removed to the hospital where he succumbed to his injuries.

5. Mr.Shashank Manohar, learned Advocate for the applicant invited my attention to the statements of three eye witnesses who were present at the spot. Their statements are in tune with the first information report. The role assigned to the applicant is that he was heard saying "Let us run away, Suraj has died". My attention is also invited to the statements of three other persons who have witnessed the incident. They have narrated the incident of firing, but have not stated about the presence of the applicant and the co-accused. These statements have been pointed out to contend that there is a discrepancy in the statement of eye witnesses on the point of presence of the applicant at the spot. It is then contended that there is a delay in lodging the FIR in the sense that the record shows that the applicant and co-accused were arrested within an hour of the incident and were brought

to the Police Station. Despite such status, the FIR has been lodged at about 10.00 p.m. The learned APP has countered the submission of delay in lodging the FIR by pointing out that under clause 3(b) of the FIR, the time of receipt of information is mentioned as 2.30 p.m. According to him, it takes time to write down the contents of the FIR and upload the same and, therefore there is no delay.

6. I need not go into the issue of delay so also the discrepancies in the statements of three eye witnesses and statements of the other three witnesses. To my mind, even if the best evidence is taken consideration, the prosecution may not be able to show complicity of the applicant with the crime. The statements of three important witnesses if taken at its face value, would indicate that Alfred is the one who has fired 4-5 rounds at Suraj. Immediately after the incident of firing, the applicant and two accused came at the spot on the motorcycle. The applicant said "Let us run away, Suraj has expired". This is the only incriminating material against the applicant, though that has been relied upon by the learned APP to contend that the said statement will at least show presence of the applicant at the spot. It also shows that the applicant was knowing Suraj and has seen that Suraj has died of the attack. The learned APP has suggested in his arguments that there was no reason for the applicant to run away from the spot if he was not involved in the crime. The said conduct of the applicant along with the previous record and the criminal antecedents would show that there was rivalry between the two groups - one belonging to the applicant and the other belonging to Suraj (deceased). Hence, according to him, this conduct coupled with other material, if taken collectively, the ingredients of Sections 120-B and 149 are attracted. He would further contend that

law is well settled on the point that there may not be direct evidence of criminal conspiracy. The collective evidence, which includes the evidence prior to the incident, at the time of the incident, and subsequent to the incident if taken together, would indicate the intention to commit crime.

7. I am not inclined to accept the contentions raised on behalf of the Respondent -State. As stated earlier, the evidence of first three witnesses would only show that the applicant and his friends came at the spot and the applicant said that “let us run away, Suraj has expired”. This statement, even if taken together with the theory of the prosecution there was an old enmity between the two groups, will not be sufficient to show the complicity of the applicant with the crime. This statement and the theory of old enmity would only draw an angle of suspicion towards the applicant but will not be in itself a cogent material to show his involvement in the crime.

8. The learned counsel for the applicant has referred to the judgment of the Hon’ble Supreme Court reported in (1972) 3 SCC 393 in the case of Thulia Kali vs. State of Tamil Nadu, in support of his contention that the delay in lodging the FIR in a given case is fatal. To my mind, the law is well settled on the point that the delay in lodging the FIR by itself cannot be a ground for acquittal in all cases, but would depend on the facts and circumstances of each case. If the delay in lodging the FIR is satisfactorily explained the FIR would be relevant and significant material. In the present case, there are two versions. The applicant contends that though the witnesses and the accused were in the Police Station at around 3.00 pm, FIR has been lodged at 10.00 pm, the learned APP however contends that the information was received at

2.30p.m. and formalities to draw the FIR takes some time. To my mind, this aspect can only be thrashed at the time of the trial. The judgment, therefore, may not be relevant at this stage.

9. My attention is then invited to another judgment reported in AIR 2004 SC 3030 in the case of Esher Singh vs. State of Andhra Pradesh. This is in context with the evidence on criminal conspiracy. The Hon'ble Supreme Court has held that usually there is no direct evidence on conspiracy and that therefore the circumstances that are proved before, during and after the occurrence will have to be considered to decide about the complicity of the accused. The Apex Court has also held that the circumstances relied upon for the purpose of drawing an inference of conspiracy should prove that the commission of the offence is in furtherance of alleged conspiracy. Thus, the Hon'ble Supreme Court has held that conspiracy has to be prior to the commission of the crime, which is well settled principle of law. However to prove conspiracy, the evidence that could be relevant is something that relates to the circumstances that occurred prior to, at the time, so also subsequent to commission of the offence. In the present case, the prosecution intends to rely upon the documents that would show that there was rivalry between the two groups. However, that may not be sufficient evidence. The prosecution will have to in addition to rivalry, place on record the material to prove the element of the conspiracy to eliminate the deceased. Mere rivalry will not be a sufficient ground.

10. Learned Advocate for the applicant has then drawn my attention to the case reported in (2021) 3 SCC 713 in the case of Union of India vs. K.A. Najeed, in support of his contention that personal

liberty guaranteed by the Constitution covers within its ambit not only due procedure and fairness but also access to justice and speedy trial. He submits that the applicant has been arrested on 08.08.2020. He is in jail for about two-and-a-half years. The charges have not yet been framed and as such, further incarceration of the applicant will be against the liberty guaranteed by the Constitution.

11. True it is that the accused are entitled for speedy trial. The commencement of trial is not in the sight. However, the liberty guaranteed under Constitution will have to be tested *vis-a-vis* the evidence against the person accused of committing crime. If the evidence is overwhelming, further incarceration will be lawful. In the present case, however, in my considered view, considering the nature of evidence against the applicant, the further custody can be said to be against the personal liberty guaranteed by the Constitution. Merely on the basis of the statements of three eye witnesses stating that the applicant was present at the spot coupled with old enmity, will not be sufficient to continue the incarceration of the applicant.

12. Learned APP submits that, as many as seven cases are pending against the applicant, out of which one relates to externment. Learned counsel for the applicant submits that the externment proceedings have been quashed. Moreover, the Hon'ble Supreme Court in the case of Maulana Mohammad Amir Rashadi vs. State of Uttar Pradesh and another: (2012) 2 SCC 382, observed that mere antecedents may not be a sufficient reason for detention, in absence of substantial material in existing crime. In the case, many cases were registered against the accused, however, the Supreme Court declined to cancel the

bail by observing that despite criminal antecedents it is the duty of the Court to find out the role of the accused in the case in which he has been charged. Thus, in a way, the antecedents alters significance when there is some cogent evidence against an accused person in a particular crime. Merely on the basis of antecedents, the personal liberty cannot be compromised.

13. The learned APP apprehends that releasing the applicant, at this stage, may prove fatal to the prosecution case, in the sense that the applicant who has criminal antecedents, may influence prosecution witnesses and may tamper with the prosecution evidence. He further submits that the possibility of the applicant committing similar such offence cannot be ruled out. This argument, however, in absence of cogent material against the applicant in the present crime, can be dealt with by putting the applicant to appropriate terms. Put together, the applicant has made out a case in his favour.

14. Needless to mention that the observations made in this order are only for deciding this Bail Application and the Court below shall not get influenced by it.

15. Hence the order :-

ORDER

- (i) The Application is allowed.
- (ii) The applicant- Aman s/o Anand Andewar, be released on bail, in connection with Crime No. 530/2020 registered with Police Station Ballarshah, Dist.Chandrapur, for offences punishable under sections 143, 147, 148, 149, 302 and 120-B of the Indian Penal Code and Sections 4,

25, 7 and 27(3) of the Arms Act, on he furnishing PR. bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(iii) The Applicant shall not enter the territorial jurisdiction of Ballarshah Police Station, Chandrapur, pending trial, except once for complying bail conditions, i.e. (clause iv).

(iv) 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 and the residence without permission of the trial Court.

(v) The applicant shall regularly attend the court and cooperate to complete the trial. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) 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.

(vii) The applicant shall not leave the territory of Chandrapur District without prior permission of the Court, till the trial is over.

(viii) The applicant shall maintain law and order.

(ix) 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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