

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

CRIMINAL APPLICATION (BA) NO. 1494/2022

Jitendra s/o Ramchandra Masharkar .vs. State of Maharashtra through PSO Ps.
Shirpur, Tq. Wani, Dist. Yavatmal.

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

Court's or Judge's orders

Mr. A. V. Band, Advocate for applicant.
Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 2, 2023.

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 20.08.2022 in Crime No.345/2022, registered with Police Station Shirpur, District Yavatmal, for the offences punishable under Sections 307 and 120(B) of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that the applicant with three co-accused, has made an attempt to eliminate his wife, the informant. The informant is an Assistant Teacher in Zilla Parishad school. On 18.08.2022, when she was coming back home after attending the school, one unknown person wearing black T-shirt and blue jeans, assaulted her by knife. The informant shouted. Couple of persons came to her rescue. She was admitted to hospital. The assailant was apprehended by the villagers. His name was revealed as Mohammad Raja Abbas Ansari, the accused no.1. Accordingly, First Information Report came to be lodged.

3. It is the case of the prosecution that during investigation, it transpired that the applicant through his friends Sanjiv Pattiwar, accused no.2 and Deepak Sengarp, accused no.4, had contacted accused no.1 and has given a contract to kill the informant.

4. There is no direct evidence to show that the applicant has given contract of killing his wife through accused nos.2 and 4. The evidence that has been collected shows that accused nos. 2 and 4 were in contact with accused no.1 through the mobile phone. The Call Detail Record (CDR) does not indicate that the applicant had ever contacted accused no.1. The other evidence is supplementary statement of the informant recorded on 24.08.2022. She states that the applicant had illicit relationship with one lady. She further states that on 13.10.2021 when she along with her colleague were proceeding on Scooty, another Scooty gave a dash to her vehicle and therefore both fell down. She then states that her son Kushal had expired suddenly and she had a doubt that her son has been killed by the applicant. At this stage, learned counsel for the applicant, submits that the informant had lodged report of death of her son and that after investigation it was revealed that the death was natural.

5. The informant then states in her supplementary statement that on 19.08.2022, she along with her husband went to Police Station, Shirpur. She came to know at police station that her husband and the co-accused are responsible for the attack. She also states that her death will be beneficial to get an amount of Rs.36,00,000/- invested by the informant in fixed

deposits and also flat worth Rs.50,00,000/-. Accordingly, she has suspected the role of the applicant in the attack.

6. The next evidence is letter written by the applicant from jail to the informant. Perusal of the same would show that the applicant has stated that he has committed mistake and he is repenting the same. Letter however is completely silent about the nature of mistake committed by him. The letter does not remotely indicate that the applicant has confessed the crime under question.

7. Thus, even if the entire evidence is accepted as it is, what transpires is that the informant is attacked by an unknown person. The evidence in the form of CDR would show that, the co-accused i.e. accused nos. 2 and 4 were in contact with the applicant. The informant is suspecting applicant for the attack, on the count that the applicant is involved in the illicit relationship and that he will be financially benefited if the informant is eliminated.

8. This evidence, at the most, would be relevant to support the suspicion of the informant but can, by no stretch of imagination, be said to be the proof of the involvement of the applicant in the crime. There is no admissible evidence to show that the applicant has hired the services of accused no.1. The investigating officer ought to have collected the admissible evidence if it was disclosed to him by the co-accused that the attack was done at the behest of the applicant. No such evidence, however, is collected.

9. Further, nothing is to be recovered from the applicant. The co-accused are already released on bail. Even the accused no.1 who was apprehended at the spot, has also been released on bail. The investigation is complete. The charge-sheet has been filed on 02.11.2022. It will take time to commence and conclude the trial. On inquiry, learned counsel for the applicant submits that there are no criminal antecedents against the applicant. The applicant is residing in Chandrapur for years together.

10. In the circumstances, there appears no reason as to why the applicant should be kept behind bars. Interest of prosecution can be protected by putting the applicant to appropriate terms.

11. The observations made in this order are prima facie in nature and are made for deciding the present application only. The learned Judge, who is seisin of the of the trial, shall not get influenced with the above observations.

12. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Jitendra s/o Ramchandra Masharkar, be released on bail in Crime No.345/2022, registered with Police Station Shirpur, District Yavatmal, for the offences punishable under Sections 307 and 120(B) of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/- 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 adjournments, 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 enter the locality where the informant resides and shall not contact the informant in any manner.

(vii) The Applicant shall maintain law and order.

(viii) 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.)