



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

CRIMINAL APPLICATION (BA) NO.203 OF 2024

Brijpal Singh Meherban Singh Thakur

Vs.

State of Maharashtra, Through its Police Officer Wadner, District Wardha

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Advocate for applicant.

Ms. H. N. Prabhu, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 04/07/2024

1. The applicant came to be arrested on 07.09.2023 registered with Police Station, Wadner District Wardha in connection with Crime No.419/2023 for the offences punishable under Sections 395, 397, 120-B, 171, 201, 342 of the Indian Penal Code and the under Section 3/25 of the Arms Act.

2. The crime is registered on the basis of report lodged by Atthesing Bhagwanji Solanke alleging that he is working as a driver. On 06.09.2023 at about 3.00 p.m., he received the phone call of Nitin Joshi and said Nitin Joshi asked him to call one Kamlesh Shah therefore, he called Kamlesh Shah and said Kamlesh Shah disclosed to him that Nitin Joshi would hand over some amount to him and that amount is to be carried out at Hyderabad. Thereafter, the amount of

Rs.4,52,00,000/- was handed over to him by packing it appropriately, therefore, he proceeded at about 4.00 p.m. from Nagpur to Hyderabad. When he was proceeding from Nagpur to Hyderabad and crossed the Pohana village at that time, one white Honda City car restrained his car and four persons came out from the said car and assaulted him also, remove the key of his car and looted the said amount. On the basis of the said, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the application filed under Sections 395 and 397 is concerned, there were only four persons, the applicability of these sections itself is doubtful. He submitted that the applicant was not identified during the identification parade. The applicant was not present at the spot of incident therefore, his involvement in the said crime itself is doubtful. He further submitted that considering there is absolutely no material to connect him with the alleged offence and on the basis of mere recovery which is not sufficient to show his connection with the alleged offence, the application deserves to be allowed.

4. Learned APP strongly opposed the said application on the ground that there was a criminal antecedents against the present applicant as he was involved in the similar type of the crimes. She

further submitted that during the investigation the involvement of the present applicant revealed in a conspiracy and in perusal of the said conspiracy, the car which was driven by the complainant was intercepted and thereafter, the amount was looted. She submitted that from the present applicant on the basis of his statement recorded under Section 27 of the Indian Evidence Act, the amount of Rs.1,06,50,000/- was recovered. Thus, this material is sufficient to show his connection with the present crime.

5. After hearing the learned Counsel for the applicant and learned APP for the State and after going through the investigation papers, as far as the identification of the present applicant is concerned, admittedly, he is not identified during the investigation to show the connection of the present applicant with the other co-accused, the investigating agency relied upon the CDR reports. As far as the connection of the present applicant is concerned, which reveals from his memorandum statement which is recorded under Section 27 of the Indian Evidence Act.

6. Learned Counsel for the applicant placed reliance on the decision of Privy Council in the case of **Pulukuri Kottaya and others Vs. Emperor, Privy Council Appeal No.37/1946 decided on 19.12.1946**, wherein the scope of Section 27 is

discussed. It states that Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Admittedly, Section 27 is an exception to the confession which is recorded under Section 25 of the Indian Evidence Act.

7. In the present case, fact discovered regarding the money which was concealed by the present applicant and it was discovered at the instance of the present applicant. Therefore, at this stage, this material itself is sufficient to connect the present applicant with the alleged offence. Considering the *prima facie* case against the present

applicant, at this stage *prima facie* case is made out and the bail application deserves to be rejected. Accordingly, I proceed to pass following order:

The application is rejected.

(URMILA JOSHI-PHALKE, J.)