



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

CRIMINAL APPLICATION (BA) NO.282/2024

Shri Santosh alias Raj alias Rajvir s/o Kuvarlal Yadav

..VS..

State of Mah., thr.PSO PS Mul, Tahsil Chandrapur, District Chandrapur

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

Court's or Judge's Order

Shri N.M.Gaidhane, Counsel for the Applicant.
Shri D.V.Chauhan, Public Prosecutor for the State.
Shri A.M.Ghare, Counsel to Assist the Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/07/2024

PRONOUNCED ON : 07/08/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.178/2023 registered with the non-applicant/ police station for offences punishable under Sections 120-B, 201, 307, 468, and 471 read with 34 of the Indian Penal Code and under Sections 3 and 25 of the Indian Arms Act and under Section 135 of the Maharashtra Police Act.

2. The applicant came to be arrested on 23.5.2023 and since then he is in jail.

3. The accusations against the applicant are on the basis of

2

report lodged by Santosh Singh Chandelsingh Rawa alleging that on 11.5.2023, at about 7:00 pm, he had been to attend a meeting of the Chandrapur District Central Cooperative Bank at Mul, district Chandrapur. At about 9:15 pm to 9:30 pm, he came out of the bank. At the relevant time, a Swift Car was standing in front of the bank and a person wearing black colour Burkha got down from the car and fired a bullet at him which hit to his left shoulder. Due to the said fire, he sustained injuries to his left shoulder. On the basis of the said report, the crime is registered against an unknown person. During investigating, it revealed that the applicant hatched conspiracy and in pursuance of the said conspiracy, the bullet was fired by wearing black colour Burkha.

4. Heard learned counsel Shri N.M.Gaidhane for the applicant, learned Public Prosecutor Shri D.V.Chauhan for the State, learned counsel Shri A.M.Ghare assisting the prosecution.

5. Learned counsel for the applicant submitted that as far as involvement of the applicant is concerned, the same is not revealed from evidence collected during the investigation. Due to a political rivalry, the applicant is implicated in the alleged offence. He further submitted that now, the injured is already discharged from hospital and

there is no apprehension of death. He further submitted that evidence collected in the nature of CCTV Footage does not show presence of the applicant in shop where the Burkha was purchased. The entire case rests on circumstantial evidence. As such, as investigation is completed and chargesheet is filed, the applicant be released on bail.

6. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Union of India (UOI) vs. K.A.Najeeb, reported in MANU/SC/0046/2021;

2. Mani vs. State of Tamil Nadu, reported in MANU/SC/7040/2008;

3. Sanjay Chandra vs. CBI, reported in MANU/SC/1375/2011, and

4. Shailendra Rajdev Pasvan and ors vs. State of Gujarat and ors, reported in MANU/SC/1744/2019.

7. *Per contra*, learned Public Prosecutor for the State submitted that the applicant not only is involved in the conspiracy but also his presence at the spot is revealed from investigation papers. During investigation, on the basis of memorandum statement of the applicant, incriminating weapon i.e. fire arm was recovered. The said fire arm was referred to the Ballistic Expert and report of the Ballistic Expert shows detection of metallic lead and copper in absence of

blackening and powder residues around the periphery of encircled short holes on half shirt in Exhibit-2 are consistent with the wipe and passage of copper jacketed bullet having been fired from beyond the powder range of the weapon. At the instance of the applicant, place where sticker was burnt, which was prepared to hide identity of the car by affixing radium sticker of incorrect number, was also detected. Another Ballistic Report shows that a country made pistol seized from the applicant is in a working condition. It is capable of chambering and firing 7.65mm pistol cartridges. Residues of fired ammunition nitrite was detected in the barrel washings of Exhibit-1, showing that the pistol was used for firing prior to its receipt in the laboratory. The Report further shows that one 7.65mm pistol cartridge from laboratory stock was successfully test fired through the country made pistol in Exhibit-1. Exhibit-2 is a magazine of country made pistol. It can accommodate about seven pistol cartridges which can readily sit in the butt stock cavity of country made pistol in Exhibit-1. The statements of witnesses show that the applicant, who was member of the conspiracy, prepared a fake number to affix on the car and prepared a fake number plate prior to the incident. Two Burkhas were purchased with the help of witness Nayna Rakhunde, who was serving with the co-accused. The statement of Vishal Nimje shows that in the evening of the incident, he had seen

the applicant and the co-accused proceeding towards Chandrapur. CDRs also show communication between the applicant and other co-accused. Recital of the First Information Report reveals that the complainant, who is the President of the Chandrapur District Central Cooperative Bank, implemented various Schemes. He also contested elections of the Krushi Utpanna Bazar Samiti in which, opposite party, lost the elections and, therefore, with the help of the applicant an attempt was made to eliminate him. He submitted that there is a *prima facie* material against the applicant to connect him with the alleged incident. If the applicant is released on bail, there is every possibility of tampering of evidence and eliminating the complainant and, therefore, learned Public Prosecutor for the State prays for rejection of the application.

8. Having heard learned counsel appearing for respective parties, perused investigation papers. Admittedly, the First Information Report is lodged against unknown persons. During the investigation, name of the applicant is revealed. The applicant was present at the spot of the incident. The investigation officer recorded statements of witnesses which show that co-accused arranged Burkha and, thereafter, a fake number plate was prepared and affixed on the said car and, thereafter, the applicant and other co-accused came at the spot and

fired a bullet on the complainant. The weapon, i.e. pistol used in the commission of the crime, was recovered at the instance of the applicant. Statements of various witnesses show involvement of the applicant in the alleged offence. Not only this, evidence collected shows that after the incident, the applicant was seen along with co-accused proceeding in the same car. The ballistic opinion shows involvement of the applicant in the alleged offence.

9. Insofar as the decision in the case of **Shailendra Rajdev Pasvan and ors vs. State of Gujarat and ors** *supra* is concerned, the entire case is based on circumstantial evidence and on the basis of evidence, the accused was acquitted of charges.

The decision in the case of **Union of India (UOI) vs. K.A.Najeeb** *supra* is on the aspect of speedy trial and the Honourable Apex Court released accused on ground of delay in trial.

The decision in the case of **Mani vs. State of Tamil Nadu** *supra* is also on the basis of evidence recorded before the trial court.

The decision in the case of **Nirmal Kumar vs. State of UP**, reported in **MANU/SC/0208/1992** also accused is acquitted as there was insufficient evidence.

Insofar as the decision in the case of **Sanjay Chandra vs. CBI** supra, when under trial prisoners are detained in jail custody to an indefinite period, every person, detained or arrested, is entitled to speedy trial.

10. Insofar as the present case is concerned, the applicant is arrested on 23.5.2023, chargesheet is filed on 5.8.2023, the case is already fixed for framing of charge, and trial would commence at any point of time.

11. Considering the nature of the evidence, role played by the applicant, tampering of the evidence after the incident, and there is an apprehension that if the applicant is released on bail, he would tamper the prosecution evidence cannot be ruled out, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!