



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

CRIMINAL APPLICATION (BA) NO. 319 OF 2024

RAJENDRA NATHUJI NIMBHORKAR

VS

THE STATE OF MAHARASHTRA THR. PSO, PS CHANDUR BAZAR, TQ.
CHANDUR BAZAR, DIST. AMRAVATI

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Y.P.Bhelande, counsel for applicant.

Mr. Nitin Autkar, APP for non-applicant/State.

Mr. Saumitra Amol Kanetkar counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/04/2024.

1. The applicant came to be arrested on 31/01/2024, in connection with Crime No. 36/2024 registered with Police Station Chandur Bazar, District Amravati for the offence punishable under Sections 120-B, 307 read with Section 34 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of report lodged by Nitin Arunrao Tekade, alleging that he has performed the inter-caste marriage with the daughter of the present applicant, and thus the present applicant dislike the same and he wants to take revenge against him. Therefore, he conspired with the other co-accused to kill him, and in pursuance of the said conspiracy, the applicant and other co-accused have attempted to attack

on him, regarding the same, the earlier crime No. 236/2023 was registered.

3. He further alleged that on 31/01/2024, when he had been to drop one of the passenger in his Auto-rickshaw, he received phone call of his friend and who inform that, he should be aware about the surrounding circumstances. He came in front of the Kadar Pan Stall, at that time, the co-accused Akshay Rajesh Wankhede and one unknown person came there with the weapons like knife and iron rod and assaulted him. On the basis of said report, the police have registered the crime against the co-accused as well as the present applicant. As per the allegation of the prosecution that present applicant is one of the conspirator and in pursuance of the said conspiracy, the complainant was attacked and the injury was caused by the co-accused.

4. Learned counsel for the applicant submitted that as far as the participation of the present applicant in the conspiracy is concerned, there is absolutely no material to show that he is one of the Conspirator. He further submitted that admittedly, initial offence was registered against the present applicant but it is not sufficient to show that the applicant has conspired to kill the complainant. In fact, the presence of the present applicant was not noted by any of the witnesses. There is no material to show that the present applicant has engaged the co-accused to kill the complainant. Thus, in absence of any evidence, the present applicant is shown to be involved in the alleged offence. Even the CDR

Report also nowhere shows the communication between the present applicant and other co-accused. Considering all these factors, no prima-facie case is made out against the present applicant and prays for releasing the applicant on bail. Now, the investigation is already completed and charge-sheet is already filed, further incarceration of the applicant is not required and prays for releasing him on bail.

5. Learned APP and learned counsel for the informant strongly opposed the said application on the ground that initial offences are registered against the present applicant, on the basis of report filed by the complainant. Initially also, there was an attempt to cause the injuries to the complainant to eliminate him. Fortunately, the complainant was saved by his friends, and on the day of the incident also, in pursuance of the conspiracy, the attack was on the complainant. It is submitted that CDR reports are collected during the investigation as well as the investigation officer has also collected the documents regarding the earlier offences registered against the applicant and two NCR Reports filed against the present applicant. There is a motive for the present applicant to enter into the conspiracy as against his wish, the daughter of the present applicant has performed the marriage with complainant. Considering the same, as prima-facie case is made out against the present applicant, his bail application deserves to be rejected.

6. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers.

On perusal of investigation papers, there is no dispute that the daughter of the present applicant performed the marriage with the complainant against the wish of the present applicant. It is also reveals that there was previous enmity on that account and previous offences are registered including the NC Reports. The previous offence ~~was~~ also registered, on an allegation that due to the marriage by the daughter of the present applicant with the complainant, the present applicant wants to take revenge by eliminating the deceased and therefore, the deceased was attacked. As far as the present incident is concerned, it is alleged that the applicant is the main conspirator who engage the co-accused to eliminate the deceased. Admittedly, no direct evidence would be available to show the involvement of the present applicant in conspiracy, however, there should be some material to show that the applicant was entered into the conspiracy to eliminate the deceased or to cause injuries to the deceased. The investigation officer has collected the CDR reports but the CDR Reports also nowhere shows that there was either communication to the present applicant and the other co-accused, prior to the incident or after the incident. Mere previous enmity between the present applicant and the complainant is not sufficient to show the involvement of the present applicant in the alleged offence.

7. Learned APP also pointed out that in the crime No. 236/2023, the applicant was released on bail but he has committed the breach of the condition in the bail order, and the prosecution was filed the application for cancellation of

bail. The filing of the application by prosecution for cancellation of bail is another aspect, as far as the present crime is concerned, whether prima-facie case is made out against the present applicant or not is to be looked into. Considering the entire investigation papers, admittedly except the previous enmity, there is no other material to connect the present applicant in the alleged offence. Now the investigation is already completed and charge-sheet is filed, his further custody is not required. In view of that, application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (a) The application is allowed.
- (b) The applicant – ***Rajendra Nathuji Nimbhorkar*** shall be released on bail, in connection with Crime No. 36/2024 registered with Police Station Chandur Bazar, District Amravati for the offence punishable under Sections 120-B, 307 read with Section 34 of the Indian Penal Code, 1860, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (c) The applicant shall not enter into the vicinity of the Chandur Bazar, District Amravati till the culmination of the trial.
- (d) Breach of any condition would lead the cancellation of bail.

- (e) The applicant shall furnish his cell phone number(s) and address with address proof before the investigating officer.
- (f) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case, and shall not communicate in any manner with the complainant or his wife.

The application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]