



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

CRIMINAL APPLICATION (BA) NO.749 OF 2023
(Naresh Narayan Tarone Vs. The State of Maharashtra)

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

Court's or Judge's Order

Mr. A.S. Manohar, Advocate for the applicant.
Mr. Mate, APP for the State.
Mr. H.P. Lingayat, Advocate for Assist to Prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 02, 2024.

By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.15/2022, registered with Police Station Ram Nagar, Gondia for the offence punishable under Sections 307 and 120-B of the Indian Penal Code and Sections 3, 25 and 27 of the Arms Act, 1959.

2. The applicant is arrested on 29/01/2022. Since then he is behind bar.

3. The crime is registered on the basis of report lodged by the informant/injured Dhanendra Shivram Bhurle on an allegation that there was a property dispute between one Santu Rao, a friend of the informant and co-accused Uday Gopalani and Niraj Wadhwani.

4. The co-accused have threatened the informant and said Santu Rao. On 28/01/2022, at about 5.30 p.m. two unknown persons had accosted the informant while he was travelling on his motorcycle and

had fired bullet at him, hitting him at the cheek, due to which he sustained the injuries. On the basis of such report the crime is registered.

5. Learned Counsel for the applicant submitted that the present applicant is not named in the FIR and only material available against him is the identification parade which is held approximately after four months of the alleged incident. As far as his involvement is concerned, except the identification parade no other material is against him to show that he has fired the bullet as no supplementary statement is recorded by the Investigating agency to ascertain the role of the present applicant. He further submitted that as per the tower location report, present applicant has called the informant and the tower location report shows two different places. He submitted that as per the allegation of the prosecution on 28/01/2022 there was a call from the mobile phone of the present applicant on the mobile phone of the informant at about 17:30:55, at the relevant time the tower location shows that the present applicant was present at Shastri Ward at post Gondia, Taluka Gondia, District Gondia.

6. The another incoming call received by the present applicant from the informant at about 18:27:45, at the relevant time, the tower location of the present applicant is shown as Katangikala District Gondia. He also invited my attention towards the tower location of the mobile phone of the informant which shows that at about

5.30 tower location of the informant was shown as BSNL Gondia and at 6.27 it is shown as Ram Nagar Bazar Chowk, Near Police Chowki, Ram Nagar, Gondia.

7. Learned Counsel has also placed on record the Google map. As per the Google map, the distance between Maharaja Dhaba, Katangikala and Ram Nagar police station is of 5.1 kilometers. He submitted that if the prosecution case is accepted then at the relevant time, the tower location of both the persons should be same place. However, tower location report has not supported the case of the prosecution.

8. He further invited my attention towards the supplementary statement of the informant which shows that inadvertently he has narrated the time of incident as 5.30 initially but the incident has occurred at about 6.30. He further placed reliance on the statement of Gulam Yasin Khan who states that he is working as a Photographer and he was called at about 6.00 p.m. by the police. He immediately went at the Ram Nagar police station and thereafter at the spot of incident wherein the police has already drawing the panchnama. He submitted that whereas the spot panchnama shows the timing as 10.02 to 10.22. Thus, there is no consistency regarding the drawing of the panchnama also. He further invited my attention towards the statement recorded under Section 164 of the Pavankumar who has retracted from his earlier statement and submitted that earlier statement was

recorded by the police by threatening him. The statement of informant is also recorded under Section 164 wherein also the informant has stated the alleged incident has taken place at 6.30. Thus, he submitted that there is complete inconsistency as regards the presence of the present applicant at the spot of incident. There is inconsistency regarding the tower location also because it is not matching as per the prosecution case. The statements of the witnesses which are recorded to show the connection with the alleged offence are also not sufficient as one of the witness has retracted from his earlier statement and stated that his statement was recorded under pressure. The photographer statement shows that the panchnama was drawn at about 6.00 to 6.30 p.m. whereas the spot panchnama shows the timing as 10.02 to 10.22. Thus, the entire investigation is insufficient to connect the present applicant with the alleged offence. The co-accused are already released on bail. Now, investigation is completed and charge-sheet is filed. Considering the nature of the evidence collected by the Investigating agency during the investigation. Further incarceration of the present applicant is not required and hence, he be released on bail.

9. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the offence is of a serious nature. The investigation papers shows that present applicant who was a pillion rider on the motorcycle and the motorcycle was

driven by another accused. Then both came at the spot. The present applicant fired bullet. One empty cartridge and one missing bullet was found at the spot of incident. The Investigating agency has collected the blood stains from the spot of incident. The statements of the witnesses connects the present applicant with the alleged offence. The present applicant is also identified during the identification parade. Thus, there is a *prima facie* material against the present applicant to connect him with the alleged offence. In view of that application deserves to be rejected.

10. Learned Counsel for the intervenor/original complainant also submitted that considering the nature of the evidence, the applicant is identified during the identification parade. The statement of the witnesses shows the involvement of the present applicant with the alleged offence. He further submitted that as far as the tower location part is concerned which is a matter of evidence. At this stage, whether there is a *prima facie* material or not is to be seen.

11. The statements of the witnesses and test identification parade wherein the applicant was identified by the informant is sufficient material to connect the present applicant with the alleged offence. If he is released on bail, he will tamper with the prosecution evidence, and therefore, application deserves to be rejected.

12. Having heard both the sides and on perusal of the investigation papers, admittedly, the name of the present applicant is not mentioned in the FIR. There are no eye-witnesses to the alleged incident. The test identification parade in which injured has identified the present applicant is drawn after four months and after the test identification parade, the supplementary statement of the informant is not recorded by the Investigating agency to ascertain the role of the present applicant. As far as the statement recorded by the police of Pavankumar shows the involvement of the present applicant in the alleged offence but said statement is retracted by him during his statement under Section 164 of the Code of Criminal Procedure and stated that said statement was obtained by the Investigating agency by threatening him and by pressurizing him. The another material on which prosecution placed reliance on are the tower location reports. The tower location report shows that at the relevant time, when the phone call was made by the present applicant to the informant he was at Shastri ward at about 5:30:55 and when the incoming call is received by the informant he was shown to be at Katangikala. As per the informant, alleged incident has taken place at 5.30 and subsequently he stated that the alleged incident has taken place at about 6.30. Then at 6.30, the tower location report of the informant should have been at Katangikala but his tower location report shown to be near Ram Nagar, Bazar Chowk near Police Chowki, Ram

Nagar, Gondia. Thus, if the prosecution case is accepted as it is the tower locations are contrary to the allegations. As per the allegations of the informant, the alleged incident has taken place not at 5.30 but at 6.30. If the timings of both the tower locations reports are taken into consideration, the applicant and the informant are shown to be at different tower locations. The Google map shows the distance between the two places is approximately five kilometres. Admittedly, at the time of considering the bail application, the entire evaluation of the evidence is not necessary and evidence should not be evaluated but at the same time, whether *prima facie* case is made out against the present applicant or not is to be looked into. Considering the investigation material at this stage, except the test identification parade there is no other material to connect the present applicant with the alleged offence. Now, the investigation is already completed and charge-sheet is filed. Other co-accused are already released on bail. Further incarceration of the present application is not required as no purpose will be served by keeping the present applicant behind bars.

13. Considering the nature of the material available against the present applicant, applicant has made out the case to release him on bail. Accordingly I proceed to pass the following order :

- (i) The application is allowed.

(ii) The applicant – Naresh Narayan Tarone in connection with Crime No.15/2022, registered with Police Station Ram Nagar, Gondia for the offence punishable under Sections 307 and 120-B of the Indian Penal Code and Sections 3, 25 and 27 of the Arms Act, 1959, be released on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. till conclusion of the trial and shall cooperate with the investigating agency.

(iv) The applicant shall not leave territorial jurisdiction of the Gondia district without prior permission of the Court till culmination of the trial.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

14. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)