



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

CRIMINAL APPLICATION (BA) NO. 5/2024

Amar @ Monu s/o Kuwarlal Yadav V/s 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. N.M.Gaidhane, counsel for the applicant.

Mrs. M.H. Deshmukh, APP for the non-applicant/State.

Mr. A.S.Dhore, counsel for Assist. to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/02/2024.

1. The present application is filed by the applicant for regular bail, in connection with Crime No. 178/2023 registered with Police Station Mul, Tq. Chandrapur, District Chandrapur for the offences punishable under Sections 307, 120(B), 201, 468, 471 read with Section 34 of the Indian Penal Code as well as under Section 3, 25 of the Indian Arms Act, 1878 and Section 135 of the Maharashtra Police Act, 1951.

2. The accusation against the present applicant is on the basis of the report lodged by Santoshsingh Chandelsingh Rawat, who is alleging that on 11/05/2023 at about 7.00p.m. he had been to Chandrapur for attending the meeting of Chandrapur District Central Cooperative Bank. At about 9.15 to 9.30, he came out of the bank, at the relevant time, one Swift Car was standing in front of the bank. One person who was wearing Black Colored Burkha get down from the said Car and fired a bullet towards him which hit to his left

shoulder. Due to which, he has sustained injuries and immediately he was shifted to hospital. On the basis of said report, the police have registered the crime against the unknown persons.

3. During the investigation, the Investigating Officer has recorded relevant statements of the witnesses. In the statement, the names of the present applicant, co-accused Santosh alias Raj alias Rajvir s/o Kuwarlal Yadav and Rakesh s/o Mahavirsingh Yadav are revealed. As per the allegation, co-accused Rajvir s/o Kuwarlal Yadav has fired the said bullet by wearing Black Colored Burkha, whereas the allegation against the present applicant is that, in furtherance of common intention, he had provided the Black Colored Burkha to the co-accused, as well as he has changed the number plate of the Swift Car. On the basis of the said report and the investigation, the crime was registered and the applicant is arrested.

4. Learned counsel for the applicant submitted that there is no direct evidence against the present applicant to show his involvement in the alleged offence. The entire prosecution case is rested upon the statements of Naina Rakhunde, Nitish Falgunrao Parate, Vishal Ramchandra Nimje and Swapnil Mahadeorao Kelzarkar. He invited my attention towards the statement of Nitish Falgunrao Parate which is recorded under Sections 161 and 164 of the Cr.PC. He submitted that as per the statements of these witnesses, the present applicant has got prepared one sticker for his swift

car, however, the CCTV Footage is contradictory to the said narrative. In the summary of charge-sheet, the details regarding the CCTV Footage are mentioned which show that at about 01:17:14 p.m the applicant had been to the shop of 'Abhishekh Kushan and Accessories' and left the shop at about 1.29.03 p.m., whereas the statement of the witnesses shows that he left the said place at about 2.00 p.m.

5. He further submitted that the photographs of the shop from the CCTV footage are obtained, which show that the shutter of the said shop was closed. He also invited my attention towards the statement of Naina Narendra Rakhunde. According to the prosecution, said Naina Rakhunde is the employee of the present applicant, and the applicant sent her to bring the black colored two Burkhas. The statement also shows that she went to one shop and purchased the two black Burkhas, and handed over to the applicant. Whereas, the CCTV Footage also shows that on 10/05/2023 at about 09 hours 03 minutes and 35 seconds, the applicant came, he communicated the said Naina Rakhunde and took her along with him on his moped.

6. He submitted that thus, in CCTV footage nowhere shows that Naina Rakhunde went to bring the said Burkhas. The statement of shop owner from which the Naina has purchased the Burkha, is also relevant, which nowhere shows that the lady came along with one male person to purchase the said Burkhas. The statement of the other witnesses i.e. namely Swapnil Kelzarkar and Vishal

Ramchandra Nimje, are also not sufficient to show the involvement of the present applicant in the alleged offence.

7. He submitted that due to the political rivalry, the present applicant is implicated in the alleged offence. Now, the investigation is completed and charge-sheet is filed. The injured also not under the apprehension of death, as he is already discharged from the hospital. Considering the fact that the entire case is rested on circumstantial evidence, and there is no apprehension of tampering of the witnesses. The investigation is already completed, further incarceration of the present applicant is not required, hence, the applicant be released on bail.

8. Learned APP strongly opposed the application on the ground that there is a prima-facia material against the present applicant which shows that the present applicant has assisted the co-accused, and in furtherance of the common intention the bullet was fired by the co-accused, wherein the informant has sustained the injury which was life threatening. The punishment provided for the offence is imprisonment upto the life imprisonment. Considering the gravity of the offence, the applicant hails from political background, and there is every apprehension of tampering of the witnesses, therefore, the application deserves to be rejected.

9. Learned counsel for informant Mr. A.S. Dhore also vehemently submitted that during the investigation, the

Investigating Officer has collected the material which shows the involvement of the present applicant in the alleged offence. He invited my attention towards the various statements including the statement of Nitish Falgunrao Parate which shows that after the incident, the applicant and the co-accused, who fired the bullet, are seen together. He submitted that this circumstance itself is sufficient to show the involvement of the present applicant in the alleged offence. He submitted that considering the political background of the present applicant, there is every apprehension of tampering of witnesses or repeating of similar type of incident in future. In view of that, application deserves to be rejected.

10. In support of his contention, he placed reliance in the case of *Ishwarji Nagaji Mali Vs State of Gujarat and another*¹, *State of Madhya Pradesh Vs Kanha alias Omprakash*² and *Virupakshappa Gouda and another Vs State of Karnataka*³. He submitted that in all these decisions, the the guidelines are issued by the Hon'ble Apex Court while considering grant of bail. Therefore, in view of the guidelines issued by the Hon'ble Apex Court in the decisions cited supra, this application deserves to be rejected.

11. After hearing learned counsel for the applicant, learned counsel for the informant and learned APP for the State, perused the investigation papers. Admittedly, the FIR is

1 (2022) 6 SCC 609
2 (2019) 3 SCC 605
3 2017 Cri. L.J. 2769

lodged against the unknown person and during investigation the name of the present applicant is revealed. There is no allegation against the present applicant that he has fired the bullet towards the injured. As far as the present applicant is concerned, which is to the extent that present applicant has abated the other co-accused by instigating and aiding, and therefore, the allegation is that the applicant has provided the co-accused a Black Colored Burkha, and the assailant came in the said Black Colored Burkha and fired the bullet towards the injured.

12. To substantiate the said contention, the investigating officer has recorded the statement of one Naina Rakhunde. On perusal of the statement of said Naina Rakhunde shows that she had been to the shop on the say of the present applicant to bring Black Colored Burkha. The CCTV Footage is also collected by the investigating officer which contradicts the thing which shows that the applicant and said Naina Rakhunde went together on the day of incident at about 9.00 p.m. on his Moped. The statement of the shop owner nowhere shows that the present applicant was also present along with the said female, who came to her shop to purchase the said Burkha. Thereafter, the statement of one Nitish Parate is also recorded. According to him, on 11/05/2023 at about 01.00 to 2.00 p.m. the present applicant had been there to obtain the radium sticker, whereas the CCTV footage shows that the applicant has left the said shop at about 01.30 p.m. The statement of one Vishal Nimje shows that on the day of incident i.e. on

11/5/2023 at about 9.45 to 10.00 p.m. he was waiting for transport to travel towards his village. At that time, one four wheeler came, wherein the co-accused was sitting and with whom he was acquainted with and therefore, he traveled along with him. The said car was driven by the present applicant. Thus, his statement shows that after the incident, present applicant and the other co-accused are seen together. Admittedly, the present applicant and the other two accused are the real brothers. Therefore, the circumstances that they are seen together cannot be said to be adverse circumstance to connect the present applicant with the alleged offence. As far as the circumstances which are brought on record are, even if taken into consideration, the prime role is not attributed to the present applicant, the role firing the bullet is attributed to the other co-accused.

13. Moreover, I have also considered the decisions relied upon by the learned counsel for the informant in *Ishwarji Nagaji Mali (supra)*, wherein the Hon'ble Apex Court held that the relevant considerations for grant of bail are considered by the Hon'ble Apex Court in para 9.1. The Hon'ble Apex Court by referring the earlier judgment in *Gudikanti Narasimhulu vs Public Prosecutor*⁴, it is held while elaborating on the content of Article 21 of the Constitution of India in the context of liberty of a person under trial, has laid down the key factors that have to be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

4 (1978) 1 SCC 240

“7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.”

14. The Hon’ble Apex Court further referred the judgment of ***Prahlad Singh Bhati vs State (NCT of Delhi)*** reported in (2001) 4 SCC 280 and observed that:-

“8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the

witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge". The Hon'ble Apex Court have referred the various judgments and laid down the para-meters.

15. Thus, after applying the law laid down by the Hon'ble Apex Court, if the facts of the present case are considered, admittedly the evidence against the present applicant is in the nature of the circumstantial evidence. The circumstances which are relied upon by the prosecution also appears to be contradicted by the electronic evidence. Admittedly, at this stage, the evaluation of the evidence is not necessary, but considering the material which is collected during the investigation, though the same connects the present applicant in the alleged offence, one thing is to be noted that as the injured discharged from the hospital and there is no further apprehension of death appearing in this case as well as the investigation is completed and charge sheet is filed, further incarceration of the present applicant is not required.

16. In view of the above facts and circumstances, the application of the present applicant deserves to be allowed. Accordingly, I proceed to pass the following order;

- a) The criminal application is **allowed**.

- b) In connection with Crime No. 178/2023 registered with Police Station Mul, Tq. Chandrapur, District Chandarpur for the offences punishable under Sections 307, 120(B), 201, 468, 471 read with Section 34 of the Indian Penal Code as well as under Section 3, 25 of the Indian Arms Act, 1878 and Section 135 of the Maharashtra Police Act, 1951, the applicant – ***Amar alias Monu s/o Kuwarlal Yadav***, shall be released on bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the territorial jurisdiction of Chandrapur District, except attending the dates of the learned trial Court.
- d) The applicant shall furnish his address along with address proof, where he will stay after releasing him on bail and attend the local Police Station 1st of every month on 10.00 a.m. to 12.00 noon, and the concerned Police Officer shall record his presence.
- e) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f) In contravention of any of conditions imposed, bail granted deserved to be cancelled.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]