

Sessions Case No.148/2023
State vs. Labjyotsingh & ors.

Applicant: Babuwa @ Vikas Birjan Yadav.

ORDER BELOW Exh.10
(Passed on 06.02.2024)

By way of the present application accused-applicant is seeking bail in Crime No.404/2023 registered with Rajura Police Station under sections 302, 307, 120-B r/w section 34 of IPC and section 3/25 of Arms Act r/w section 135 of the Maharashtra Police Act (Sessions Case No.148/2023).

2. In short, a few facts necessary for disposal of the present bail application can be stated as under:

The FIR has been lodged by Mrunal Dohe. He is the brother-in-law of deceased Purvasha w/o. Sachin Dohe. Baldevsingh Rajvindersingh Shergil is the alleged injured. The incident in question is dated 13.07.2023. It is alleged that accused persons and injured Baldevsingh had previous enmity. On the day of the incident in question injured Baldevsingh had been to house of husband of deceased Purvasha viz., Sachin Dohe along with one Nazia Rahim Khan. It is alleged that deceased Purvasha had came out of her house to see off the injured Baldevsingh and Nazia. She was talking with Nazia Khan and injured Baldevsingh was standing near his wife and he was talking with deceased Purvasha. It is further alleged that accused-applicant gave a tip to accused no.1 and JCL on phone regarding location of injured Baldevsingh near

house of said Sachin Dohe. Upon receiving such a tip accused nos.1 and JCL reached at the spot by means of motorcycle. Accused no.1 was a pillion rider. They came near of injured, stopped the bike and fired two rounds at injured Baldevsingh and deceased Purvasha. It is further alleged that while the injured was entering into the house of Sachin Dohe accused no.1 fired but it could not shot. As such accused no.1 did cock the fire arm twice. Injured Baldevsingh fled inside of the house and deceased Purvasha was lying on ground. Accused no.1 and JCL fled away.

3. Gravamen of allegation against accused-applicant is that he procured a country-made pistol and cartage from Bihar State and provided it for use in the commission of the alleged offence pursuant to a criminal conspiracy hatched by co-accused and JCL. It is alleged that pursuant to such a criminal conspiracy accused-applicant for eliminating injured Baldevsingh, applicant provided a country-made pistol and cartage. Accordingly the fires were shot from the country-made pistol so provided by accused-applicant in which Purvasha Dohe died and Baldevsingh got injured.

4. In this application it is main contention of the accused-applicant that he has been falsely implicated. It is contended that except an alleged statement of co-accused Akash there is nothing incriminating against accused-applicant to show that he is a party to the alleged criminal conspiracy. It is contended

that at the relevant time of the incident in question applicant was at Ahmedabad. It is contended that on mere presumption the accused-applicant has been involved in the present crime. It is contended that CDR produced on record being a weak evidence cannot be a base for holding accused guilty of the alleged offences. It is contended that there is no prima facie material to show any involvement of accused-applicant in the commission of the alleged offence. It is also contended that the accused-applicant is a young boy. Hence the application.

5. Prosecution has opposed the application by filing say vide Exh.13. It is contended that there is prima facie material to show that accused-applicant is involved in the alleged offence. It is also contended that the offence in question is of serious nature. It is also contended that if the accused-applicant is granted bail there is possibility of threatening to prosecution witnesses. It is also contended that the accused-applicant has criminal history and one charge-sheet has been filed against accused-applicant in the Court of Judicial Magisterial First Class at Kinwat, Distt. Nanded for an offence punishable under section 399 of IPC and sections 4 and 25 of the Arms Act vide RCC No.225/2023. It is also contended that in another crime vide Crime No.509/2023 under sections 3 and 25 of the Arms Act registered with Rajura Police Station it is revealed that the seized country-made pistol has been

provided by accused-applicant. It is also contended that accused-applicant is resident of another State Bihar and as such there is possibility of abscondance of the accused.

6. I have heard both the sides. I have perused the charge-sheet.

7. During course of hearing the learned counsel for applicant made a submission that except a statement of co-accused there is no other material to show involvement of accused-applicant and as such there is no prima facie material against accused-applicant to refuse bail. In support of this submission Authority of the Hon'ble Apex Court in the case of **Haricharan vs. State of Bihar**, AIR 1964 SC 1184 is cited before this Court. A submission was made that a circumstance of pendency of certain crime against accused-applicant cannot be a ground to refuse bail. In support of this submission Authority of the Hon'ble Bombay High Court, Bench at Nagpur in case of **Sheikh Hajib vs. State of Maharashtra**, Criminal Application (ABA) No.623/2017 is cited. It was further submitted that investigation is completed and detention of the applicant is not required. In support of this submission Order of the Hon'ble Bombay High Court in case of **Sheikh Firoz vs. State of Maharashtra**, Criminal Application (ABA) No.114/2017 is cited.

8. On the other hand the learned APP made a submission that the offence in question is of serious nature and the

accused-applicant is having criminal antecedents.

9. It is material to note that the case has been committed to the Court of Sessions. A perusal of the charge-sheet would show that prosecution has invoked section 120-B of IPC with an allegation that accused-applicant, co-accused no.1 and JCL hatched a criminal conspiracy to eliminate injured Baldevsingh. It is further case of prosecution that pursuant to such a criminal conspiracy two shots were fired at injured Baldevsingh and one fire shot hit deceased Purvasha and she succumbed to the injuries. Dying declaration of injured shows that co-accused no.1 and JCL fired shots at him and deceased Purvasha. In so far as charge-sheet material *qua* accused-applicant is concerned prima facie it appears that accused-applicant procured a country-made pistol and cartages from Bihar State and made available it for use in the commission of offence in question. Prima facie it appears that accused-applicant and accused no.1 were in touch with each other. Having said so, I find that at this stage there is sufficient prima facie material to show that accused-applicant was a party to the criminal conspiracy. It is well settled that there can be seldom direct evidence of hatching of a criminal conspiracy. For the purposes of the present bail application the question of criminal conspiracy shall have to be appreciated by prima facie angle and on the basis of the prima facie appreciation of the material. As indicated above, accused-

applicant has played an active role in commission of the offence in question. He had provided the country-made pistol to accused no.1 who is the main perpetrator of the crime. Having said so, I find that this cannot be a case of no evidence against accused-applicant.

10. Question of grant of bail in the present case shall also have to be viewed from another angle of nature of the crime. It appears that an innocent lady has been killed in an incident arising out of enmity in between injured Baldevsingh and co-accused no.1. Prima facie there appears to be a reasonable nexus in between co-accused no.1 and accused-applicant. The injured was also attacked by fire shots. Fortunately the injured survived and unfortunately the innocent lady died. In any case the fact that remains on record that gravity of the alleged offence is at a very higher side. The alleged offences are punishable either with death sentence or imprisonment for life.

11. It is important to point out that prosecution has produced on record a data of case status in RCC No.225/2023 pending before the Court of Judicial Magistrate First Class at Kinwat to show that accused-applicant is one of the accused facing trial for an offence punishable under section 399 of IPC and sections 4 and 25 of the Arms Act. Prosecution has come up with a case that in another crime vide Crime No.509/2023 it is transpired that the seized country-made pistol therein has

been provided and procured by the applicant. This goes to show that the accused-applicant has criminal antecedent. In addition, accused-applicant appears to be a resident of another State viz., Bihar. Possibility of misuse of bail by the accused-applicant if granted is also at a higher side. Therefore, I find that the accused-applicant cannot be granted bail.

12. An attempt was made to show that accused is a young person and as such he is entitled for grant of bail. Be it noted that the circumstance of young age of accused-applicant has no bearing upon the bail application for the reason that gravity of the alleged offence is at a very higher side for which either death sentence or imprisonment for life is provided. Considering such a fact and situation and taking a over all view of the matter, I do not find that this can be a deserving case to grant bail to accused-applicant. Hence the following order is passed:

Order

Application (Exh.10) stands rejected.

Date : 06.02.2024.

(Girish G. Bhalchandra)
Addl. Sessions Judge-2,
Chandrapur.