

Order below bail application in RCC No. 107/2021

This is an application filed by accused No.4 Jitendra Katariya for releasing him on bail. APP and I.O. filed their say.

2] Ld. Counsel for accused submitted that accused is law abiding citizen. There are no criminal antecedents against accused. The accused is falsely implicated in the present crime. The complainant is working hand in glove with the officials of the non-applicant to evict the applicant from the possession of the property. The present applicant had moved bail application which came to be rejected by the J.M.F.C. Court on the ground that accused No.4 may tamper the evidence and may abscond if released on bail. The Hon'ble Sessions Court has also rejected the bail application on the ground that the investigation is in progress and accused will tamper the evidence. Thereafter, applicant approached the Hon'ble High Court. The Hon'ble High Court granted liberty to file fresh bail application before the J.M.F.C. Court. At this stage the charge-sheet has been filed. The investigation is over. Therefore, there is no apprehension of tempering any evidence. The complainant rented a premises to the applicant for the purpose of running Dhaba under the name and style as *Sainath Dunlop Dhaba* for a period of three years. It was agreed that applicant will pay an amount of Rs. 12,000/- per month towards rent to the complainant. It is further agreed that applicant shall deposit an amount of Rs. 1,50,000/- with the complainant towards deposit. Thereafter, the complainant agreed to sail said Dhaba to the applicant. Due to some dispute the

applicant issued a notice to the complainant for executing sale-deed. Thereafter, the applicant approached to the Court of Civil Judge Sr. Dn. Nagpur by filing Civil Suit for special performance of contract. After service of summons the complainant and other co-owners appeared before the Court. In there written statement before that Court there are no allegations against the complainant. The complainant was trying to create third party interest. The Hon'ble Court has granted interim injunction to the applicant. That order is still in operation. That order was not challenged by the applicant. The documents relating to the property are in the custody of police. The investigation is completed. The applicant is ready to co-operate.

3) Ld. APP opposed the application on the ground that the application is not maintainable as it was already rejected by the Court. The charge-sheet is filed within limitation period. There is no change of circumstances after filing charge-sheet. To support his contention he relied on the judgment of *Laxman Irrappa v. State of Maharashtra 2004 Cri.LJ 3802*.

3) On 24/06/2021 the investigation officer has prayed for some time to file say in the application. That application was rejected by this Court. Today, the investigating officer has filed his say. He opposed the bail application on the ground that present accused with the help of other accused has committed the present crime. The other accused are involved in serious offence like murder, illegal excavation of sand, extortion and kidnapping. The offences under MCOCA leveled against other co-accused. The present applicant has taken illegal possession of the property. He

with the help of other accused extorted money from the complainant by using pistol. Accused have demanded 50 lac from the complainant. They have received 10 lac from the complainant. Accused have assaulted the complainant. Accused put the complainant in the fear by showing sword. The present accused is the member of the criminal gang. One accused namely Vinit Anna is absconding. If the accused is released on bail then there is apprehension that he will tamper the prosecution evidence and they will commit the similar kind of offences. Therefore, the investigating officer prayed for rejection of bail.

4) Heard both sides. Perused all documents on record. On 7/06/2021 the charge-sheet has been filed in the present crime. All accused except accused No.5 are in jail. This Court and the Sessions Court have already rejected the bail application of the accused. After filing of the charge-sheet the present application has been filed. The amount involved in the present offence is huge. It is true that there are no antecedent against present accused but the present offence is serious in nature. The co-accused who involved in the present offence are habitual offenders. The sword has been recovered from the accused. By perusal of statements of all witnesses it prima-facie transpires that the accused extorted money from the complainant. Prima-facie it transpires that accused was demanding Rs. 50 lac from the complaint for vacating the property. It is pertinent to note that the police has filed the charge-sheet. Therefore, it is proper to say that there is sufficient evidence against the present accused. Specific role is attributed to the present accused in the investigation done by police. The

complainant has filed the FIR after more than five years. The reason for his delay is mentioned in the report. It shows that due to fear of the accused, the complainant has not filed the FIR immediately. Therefore, it can not be ruled out that if accused is released on bail then he will tamper the prosecution evidence. There are also chances that accused will abscond if he released on bail. Therefore, to my view it is not fit case to release the accused on bail. Hence, I pass following order-

ORDER

The application is hereby rejected.

Kamptee
Dated 25/06/2021.

(S.S. Gadve)
Judicial Magistrate First Class,
Kamptee.