

MCRC-3130-2017

(ROHIT RATHORE Vs THE STATE OF MADHYA PRADESH)

12-05-2017

Mr. Ghanshyam Pandey, learned counsel for the applicant.

Mr. S.S.Chouhan, learned Government Advocate, for the State along with Mr. Prafull Shrivastava, the Investigating Officer in this case.

The application is filed under section 439 of the Code of Criminal Procedure, 1973 for grant of bail on behalf of applicant in connection with Crime No.8/2017, registered at Police Station Kotwali, District Jabalpur for offences under sections 302/34 of the IPC and section 25 and 27 Arms Act. The applicant is in judicial custody since 10.1.2017.

This application was heard along with connected M.Cr.C. No.6581/2017 and M.Cr.C. No.7053/2017 and by order dated 8.5.2017, this Court was pleased to allow the aforesaid M.Cr.Cs. However, subsequently, the Investigating Officer of this case has brought to the notice of this Court that the learned counsel for the applicant in this case failed to reveal that the memorandum also disclosed that the applicant would get the fire-arm used in the offence also recovered. On that basis, this case was placed for today for further arguments.

However, today the Investigating Officer is present and has placed before this Court the second memorandum in which the disclosure pertaining to a red colour Pulsar is mentioned. As the learned counsel for the applicant has relied upon those memorandum, it cannot be stated that there has been any kind of misrepresentation before this Court.

As regards the applicant herein is concerned, learned counsel for the applicant has stated that the applicant was arrested on 10.1.2017 without any evidence but a weapon being a 9 mm pistol without any name or mark was seized from the house of Vijay Yadav, the principal

accused on the basis of the disclosure given by the applicant Rohit Rathore. However, the narrative in the 27 memorandum of Rohit Rathore reveals that the Police wanted a motorcycle which is a Bajaj Pulsar, which the applicant Rohit said he would get seized. But instead of the motorcycle what has been seized at the instance of Rohit Rathore is a pistol from the house of principal accused Vijay Yadav. Thereafter, on 8.1.2017 till 27.3.2017 more than two months, the applicant Rohit was in judicial custody and thereafter on the said date his test identification parade was done in jail as three persons were brought to identify. One of them was the informant Ravindra Kumar Mishra. The other was Surendra Kumar Mishra and the third was Deepak Jhiroliya. Out of the three persons the informant Ravindra Kumar Mishra identifies the applicant herein. The witness surendra Kumar Mishra could not identify the applicant herein and witness Deepak Jhiroliya refuses to participate in the identification process. Under the circumstances out of the three witness only one has identified the applicant herein. In the identification process, no description in relation to the act of the applicant herein is given by the Police. However, learned counsel for the State has argued that in the 161 statement of Ravindra Kumar Mishra, he has stated besides naming certain accused persons he also stated that there were several unknown persons who had also fired at the deceased and therefore, it was not essential for Ravindra Kumar Mishra to attribute the role played by applicant Rohit after the test identification parade as he was one of the unknown persons to whom this witness had already attributed the role of shooting at the deceased persons along with those who were identified on 4.1.2017 itself. Learned counsel for the applicant has stated that no possible cause has been given for delaying the identification after the arrest from 8.1.2017 till 27.3.2017. the investigating officer was questioned specifically on this issue and he has stated that the requests were made to the Executive Magistrate to arrange for the same. But however, the delay was on account of the Executive Magistrate not arranging the TIP. Be that as it may the fact that the applicant has been identified after

over two months by the informant in this case and the reasons so given by the IO seems very improbable and evasive.

The allegations against the present applicant is that he was one of the shooters which is based upon the identification by the informant on 27.3.2017 as being one of the persons who were amongst the several unknown stated in the 161 statement of 5.1.2017. Under the circumstances, the said application of applicant herein deserves to be allowed as :

1. On 10.1.2017 after he was arrested the memorandum that he made related to the disclosure of a Bajaj pulsar motorcycle and not that of any firearm. However, what has been seized through the applicant is a 9 mm pistol allegedly recovered upon his information from the house of the principal accused Vijay Yadav.
2. That the time between his arrest and his identification by Ravindra Kumar Mishra is delayed by more than two months and the reasons given by the Investigating Officer for the said cannot be appreciated by this Court.
3. That out of the three persons who were taken to identify the applicant Rohit Rathore, only Ravindra Kumar Mishra has identified but Surendra Kumar Mishra could not identify the applicant and witness Deepak Jhirolia refused to participate in the identification process.

On the basis of the aforesaid, I am inclined to allow the instant application of and direct that he be enlarged on bail upon his furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount to the satisfaction of the Trial Court.

C.C. as per rules.

(ATUL SREEDHARAN)
JUDGE

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