

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3077 OF 2015

Yogendra @ Yoesh s/o. Nana Ghugare **....Applicant**

Versus

The State of Maharashtra and Anr. **....Respondents.**

Mr. H.V. Tungar, Advocate for applicant.

Mr. U.H. Bhogle, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 3rd July, 2015.

ORDER :

1. The application is filed for relief of anticipatory bail in C.R. No. 400/2014 registered in Pathardi Police Station, Tahsil Pathardi, District Ahmednagar for offences punishable under sections 306, 504, 34 etc. of Indian Penal Code. The previous application filed for similar relief before this Court was disposed of as withdrawn. The said application was withdrawn, when the Court expressed that the Court was not inclined to grant the relief. So, the previous disposal needs to be treated as rejection on merits. The said order was made on 16th February 2015.

2. The learned counsel for applicant submitted that there has been change in circumstance which is the order made

by the other Hon'ble Judge of this Court in Criminal Application Nos. 1372 and 1397 of 2015, dated 23.4.2015. The other Hon'ble Judge has granted relief of anticipatory bail to accused Ganesh Baban Kshirsagar. The learned counsel for the applicant placed reliance on one case of Orissa High Court reported as **96 (2003) CLT 745 [Daud Lima Vs. State of Orissa]**. The relevant portion from the reported case is at paragraph Nos. 7 and 8 which is as under :-

"7. In "The Law Lexicon, reprint, 2002, By P. Ramanatha Aiyer" parity has been defined as 'being on a part with; analogy, close similarly (as) by party of reasoning'. In Chambers Dictionary, New Edition, the meaning of word 'parity' is 'equality in status, parallelism, equivalence'. It is a sad state of affairs that when the second and third bail applications were placed for consideration, the Public Prosecutor conducting such case on behalf of the State, did not bring to the notice of the learned Benches as to the order dated 12.9.2002 rejecting the co-accused's bail application. The case seems to have been considered without reference to such order. Parity, if any, was required to be followed in the later orders passed by the learned Benches, but the order having not been brought to the notice of the Court by the Public Prosecutor, the same seems to have not been considered. In such circumstances, question of dealing with the case of the petitioner keeping the

parity in view does not arise.

8. However, there is another aspect of this case. Whatever be the circumstances and reasons be the other two co-accused persons more or less similarly situated are on bail and in this fortuitous circumstances the petitioner remains the sole accused out of the three accused persons to face the trial. In such situation, we are of the considered opinion that this situation has arisen in this case mainly because of the fact that the learned Additional Public Prosecutors conducting the cases on behalf of the State of those Courts while placing the case diary, did not bring it to the notice that bail application of one of the co-accused persons namely Daud Lima, the present petitioner has been rejected. It need be stated that there is no precedence in bail orders since bail orders are passed on the basis of materials as against the accused petitioners therein and no ratio of law is decided, but all the same rejection or grant of bail in the same G.R. Case as against the co-accused persons is of much relevance."

3. It is not disputed that the order of rejection made by this Court on 16.2.2015 was not brought to the notice of the other Hon'ble Judge in aforesaid matter. Copy of the order of other Hon'ble Judge also shows that the order made by this Court is not considered by the other Hon'ble Judge and the case

of Ganesh from the case of present applicant Yogendra alias Yogesh is not distinguished.

4. There are allegations against the present applicant that he had kept illicit relations with the wife of deceased Sanjay. On 18.12.2014 there was quarrel between the wife of the deceased and deceased and in the quarrel, the relatives of the deceased had taken part and they had given abuses to the deceased and due to that, he was feeling harassed and disturbed. Sanjay committed suicide on 23.12.2014 by jumping in to well. He left behind suicide note. In the suicide note, he has mentioned that due to conduct of wife, he was required to commit suicide. He has blamed Ganesh Kshirsagar and present applicant Yogesh also. These two persons had illicit relations with his wife as per his belief. The father gave report to the police and he made specific allegations that the wife of the deceased had illicit relations with the present applicant and Ganesh and due to that, there used to be quarrels and his son committed suicide due to such relationship and due to harassment which he was facing.

5. The relief of anticipatory bail can be give after considering the factors mentioned in section 438 of Cr.P.C. It

cannot be said that there is no material at all against the present applicant to link with the offence as there is the suicide note left against him by the deceased. What happened on the day of incident needs to be ascertained and that can be ascertained only after the custodial interrogation of the person like present applicant. In view of these circumstances, this Court had refused the relief of anticipatory bail.

6. In **Criminal Application No. 2222/2015 [Shaikh Anwar Shaikh Babar Vs. The State of Maharashtra]** dated **8th June 2015**, this Court had occasion to consider and decide the situation like present one and to take the decision. The relevant observations made by this Court are at paragraph Nos. 9, 10, 11, 13, 14, 15, 16 and 17 which are as under :-

"9) As the learned counsel for the applicants mainly argued on the ground of parity, some observations need to be made. By order dated 8-5-2015 this Court directed the learned counsel for the applicants to show the law developed including the law laid down by the Hon'ble Apex Court with regard to the situation like the present one. Learned counsel for the applicants submitted that there is no such case, squarely on the point involved from the Supreme Court. However, he submitted that a Division

Bench of the Allahabad High Court has made some observations in the case of Nanha (cited supra). This Court has gone through the observations made by the Division Bench of the Allahabad High Court. In this case the Division Bench has observed that parity can be used even if previous application is rejected. The facts do not specifically show that the matter was again brought before the same Hon'ble Judge who had rejected previous bail application.

10) The learned counsel for the applicants has placed reliance on another judgment of the Apex Court reported as **(2009) 5 SCC 283 (Izharul Haq Abdul Hamid Shaikh v. State of Gujarat)**. The Apex Court has discussed the principles of parity. There cannot be dispute over the proposition that the subsequent Court is expected to consider previous orders. When the accused who came subsequent to the other accused who has got bail and their cases are similar, the other accused from the same crime are also entitled for bail.

11) The aforesaid principle is evolved mainly for two reasons like consistency and discipline. These reasons can be used when every subsequent matter comes before other Hon'ble Judge. In the present matter there is direct

evidence as against the present applicants like Accused Shaikh Anwar Shaikh Babar and accused Akbar Khan Yusuf Khan. The other evidence and circumstances are already discussed. In addition to the aforesaid evidence there is more evidence and specific allegations from the complainant as against Nitin that he had seen Nitin giving specific blow to Vitthalsingh. As against main accused Sunil there are four more pieces of circumstances like (i) motive; (ii) recovery of weapon on the basis of statement given by him under section 27 of the Evidence Act; (iii) recovery of blood stained clothes from him; and, (iv) Sunil was known to the witnesses and they had seen Sunil giving chase with the weapon and Sunil's name is mentioned in the FIR.

12)

13) When application for bail is made by one accused and that is brought before other Hon'ble Judge when bail to other accused from the same case is rejected by the first Hon'ble Judge of the Court, it is the duty of both the sides to bring this circumstance to the notice of the second Hon'ble Judge. If the ground of parity is to be considered then every Judge is expected to consider the nature of evidence available as against the applicant who has come before him

and against the accused to whom bail is granted or refused.

14) When one Judge has considered an application of one of the accused from the same crime, in view of the principle of parity, the discussion of material available against both the accused needs to be made in subsequently instituted application. Though granting of bail is within the discretion, in subsequent application filed by other accused, the Judge dealing with the matter needs to distinguish the case before him from the previous case, if the accused before him needs to be granted bail even when to other accused bail is already refused. This is the requirement of discipline.

15) If the aforesaid procedure is not followed, there cannot be consistency in the orders made by different Judges of the same Court. If the matter of the accused to whom bail is refused comes before the Judge who had refused the bail, in the past and submission is made that to other accused other Hon'ble Judge has granted bail the Judge dealing with successive bail application is entitled to see whether aforesaid procedure is followed. If after going through the order made by other Hon'ble Judge, the Judge dealing with successive application of accused

finds that aforesaid procedure was not followed, the Judge dealing with successive application of accused need not grant bail on the ground of parity. Anybody can commit mistake. The Judge who has refused bail to the accused who had first come to the Court may stick to the opinion formed in the past. In such a case, it is advisable for the accused to whom bail is already refused, to approach Higher Court.

16) In a case like present one, when the accused who is on better footing but has not got the bail, needs to approach Higher Court like Apex Court. The Apex Court can consider and decide whether bail needs to be granted to such accused. If such procedure is not followed and principle of parity is applied, the first Court will be indirectly compelled to grant bail to accused who is not entitled to get released on bail on merits. Thus, the accused who are not entitled to get released on bail will get bail if principle of parity is not properly considered and used in such cases.

17) The successive bail application can be considered only if there has been change in circumstances. The aforesaid circumstance thus cannot become a new circumstance. If aforesaid procedure is not followed, there will be no end to such successive proceedings."

This Court holds that the aforesaid observations need to be used in the present case also. As there has been no change in the circumstances and the circumstance that the said accused got relief subsequently from other Hon'ble Judge cannot be considered for granting the relief, relief cannot be granted to present applicant.

7. In the result, the application stands rejected.

[T.V. NALAWADE, J.]

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