

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

CRIMINAL APPLICATION (BA) NO.674 OF 2015

Sanjabrao @ Sanjay Vitthal Bangale

..vs..

**State of Mah., thr its Police Station Officer, Janefal Police Station, Taluka
and District Buldana**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri Anil Mardikar, Senior Counsel with Shri P.R. Wagh,
Counsel for the applicant.
Shri S.A. Chaudhari, counsel for the intervenor.
Shri A.D. Sonak, APP for the State.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 30, 2015.

By the present application under Section 439 of the Code of Criminal Procedure, the applicant is seeking his release on bail since the applicant is arrested in connection with Crime No.8 of 2015 registered with Janefal Police Station, District Buldhana, for the offences punishable under Sections 341, 302, 307, and 34 of the Indian Penal Code.

Heard Shri Anil Mardikar, learned senior counsel with Shri P.R. Wagh, learned counsel for the applicant, Shri S.A. Chaudhari, learned counsel for the first informant, and Shri A.D. Sonak, learned Addl. Public Prosecutor for the non-applicant/State.

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Learned counsel appearing for the respective parties articulate their respective submissions for the respective prayers.

It is not in dispute that for the occurrence of incident dated 24.1.2015, two different FIRs are lodged.

The first FIR is lodged on 24.1.2015, at the instance of Abhiman Manikrao Bhopale, in connection with Crime No.8 of 2015 registered with Janefal Police Station, District Buldhana for the offences punishable under Sections 341, 302, 307, and 34 of the Indian Penal Code.

The second FIR is lodged on 26.1.2015, at the instance of the present applicant, in connection with Crime No.9 of 2015 registered with Police Station Janefal, District Buldhana for the offences punishable under Sections 143, 147, 148, 149, 326, 324, 452, and 508 of the Indian Penal Code.

The present applicant seeks his release on bail in connection with Crime No.8 of 2015 registered with Janefal Police Station, District Buldhana for the offences punishable under Sections 341, 302, 307, and 34 of the Indian Penal Code.

In FIR No.9 of 2015 lodged by the present

applicant, deceased Gajanan Ramabhau Nagrik and first informant Abhiman Manikrao Bhopale in FIR No.8 of 2015, are also accused. Against the said persons, the charge-sheet is filed in the Court of law.

From the charge-sheet, it is clear that there was a long standing dispute, as regards agricultural boundary, between two families viz. family of the present applicant and the family of the deceased. Though two other persons are injured viz. Sushil and Akash, their injury certificates show that the injuries suffered by them are simple in nature.

The present applicant has also received five injuries, one is grievous, two are simple incised wound and other two are contusions.

These FIRs, in question, and also the spot punchnama describe the spot of occurrence. The said spot of occurrence is shown by Akash son of the deceased. The spot punchnama clearly recites that the spot of occurrence is the courtyard of the house of the present applicant.

The name of the present applicant, no doubt, is taken by the witnesses of the prosecution as an assailant.

However, looking to the fact that the spot of occurrence is the courtyard of the house of the present applicant and the present applicant has also received five injuries out of which one is grievous in nature, the question of aggressor will have to be decided during the course of Trial. However, one fact which, *prima facie*, appears that the accused in Crime No.9 of 2015 came to the house of the present applicant.

Further, the statement of Sushil, one of the injured, was also recorded though by way of dying declaration. His previous statement shows that Sushil was trying to change the spot of occurrence and he wanted to believe the spot of occurrence is his house which is *prima facie* doubtful in view of the spot of occurrence shown by his own brother.

Further, the prosecution submits that though the clothes of the present applicant are recovered having blood stains over it, I am afraid that *prima facie* much importance can be attached because of the following:

The arrest memo of the applicant shows that the applicant was arrested on 26.1.2015 at 14:35 hours. It further shows that, at that time, he was having pant and shirt on his person. However, those clothes were not

having any blood stain, therefore, much importance cannot be attached to the same since the occurrence is dated 24.1.2015 and the arrest of the applicant is 26.1.2015. However, for the reasons best known to the prosecution, outer clothes viz. pant and shirt of the present applicant are not seized. The seizure memo shows that inner garments viz. banyan and a handkerchief is seized having blood stains.

The investigation is already over. The charge-sheet in respect of FIR No.9 of 2015 is also filed by the prosecution meaning thereby that the prosecution is of the view that the report lodged by the present applicant is not a falsehood. Further, all the accused in FIR No.9 of 2015 are already released on bail.

In view of the aforesaid, till there is a judicial pronouncement about aggressor, further custodial presence of the applicant is not warranted. The apprehension of the prosecution is that if the present applicant is directed to be released on bail, possibility of threatening to the prosecution witnesses cannot be ruled out. But, the same can be taken care of by imposing stringent conditions on the present applicant.

It is reported that all the witnesses are from village Kasarkhed, Taluka Mehkar, District Buldhana. It is not in dispute that residence of the present applicant is Hiwra Ashram, Taluka Mehkar District Buldhana. However, it is submitted before me that the present applicant, who is a headmaster is placed under suspension, the school authorities are directed to see that the applicant must reside at town Motala which is far away from villages Hiwra Ashram and Kasarkhed. That leads me to pass the following order :

ORDER

1] The criminal application is allowed.

2] Applicant – Sanjabrao @ Sanjay Vitthal Bangale be released on bail in connection with Crime No.8 of 2015 registered with Janefal Police Station, District Buldhana, for the offences punishable under Sections 341, 302, 307, and 34 of the Indian Penal Code on his executing Personal Bond of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties in the like amount.

3] The applicant shall reside at town Motala.

4] The applicant shall not enter into the territories of Kasarkhed, Taluka Mehkar, District Buldhana and Hiwra Ashram, Taluka Mehkar, District Buldhana, till culmination of the trial.

5] That the applicant shall attend Motala Police Station once in a fortnight and preferably on every first and third Sunday of the month between 3:00 pm to 5:00 pm.

6] The applicant is prohibited from extending any threat whatsoever in the nature to the prosecution witnesses.

7] Breach of the conditions will give rise cause to the prosecution to apply for cancellation of bail.

8] Bail before the Trial Court.

9] Needless to mention that all observations made in this order are purely *prima facie* while deciding the present application and learned

Judge of Court below shall not be influenced
by the order of this Court.

With these observations and directions, the
criminal application is disposed.

JUDGE

!! BRW !!

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