

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [BA] No. 82 of 2016
[Bandu Fakira Jadhao Vs. State of Mah.]

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

Court's or Judge's orders

Mr. R. M. Daga, Adv., for the Applicant.

Mr. Jawade, APP for respondent.

Mr. Anil Mardikar, Sr. Adv., with Ms. Ankita Sarkar, Adv., for the
intervener, complainant.

- - - -

CORAM : A. B. CHAUDHARI, J.

DATE : 04th March, 2016

This is the second Bail Application by the same applicant, accused, Bandu Jadhao, since his earlier application was rejected by this Court by Order dated 17th July, 2015 in Criminal Application [BA] No. 391 of 2015. For filing second bail application, the reason furnished by the counsel for the applicant on his behalf is that there is a recording in the order that the applicant had assaulted Devidas, who was described as deceased and that he died because of the assault made by the applicant on him and that the applicant was a member of an unlawful assembly. The ground raised by the

counsel for the applicant is that the name of deceased was, in fact, Avinash, and in respect of Devidas, an offence under Section 307, Indian Penal Code, has been registered and, therefore, there is a wrong recording in inserting the name of the applicant as assailant on the deceased Avinash.

In so far as the aspect of applicant, accused, being a member of an unlawful assembly is concerned, the counsel invited my attention to various earlier orders passed by other Bench granting bail to the other accused persons, who were also the members of unlawful assembly and, therefore, according to him, the second bail application deserves to be considered in the right perspective. For this purpose, he invited my attention to another order dated 13th January, 2016, passed by this Court in Criminal Application [BA] No. 917 of 2015 and the observations made by the earlier Bench in the order dated 12th October, 2015 passed in Criminal Application [BA] No. 657 of 2015, by which Govardhan and another were released on bail and the role attributed to them was that they were the members of an unlawful assembly and had caught hold of Devidas. The counsel then submits that the injury caused to Devidas, as was alleged by the prosecution, was by iron pipe on his head, and then, as observed by this Court, Devidas was discharged within a short time. This statement is contradicted by the learned APP for the State by inviting my attention to para 8 of the reply, who submitted that the period of treatment in the hospital is

not for a shorter duration, as alleged, or as observed in the order and, in fact, a surgery for head injury and for a mandible fracture was required to be performed. The counsel for the applicant then pressed into service another ground in respect of others, namely that this Court had asked them not to enter the area in question till the trial is over and the applicant would also abide by the same condition, if imposed, and that the applicant is in jail for the last two years. He, thus, on the ground of parity, claimed grant of bail.

Learned APP Mr. Jawade for the respondent, State, and learned Sr. Adv. Mr. Mardikar for the complainant, submitted that there was one more factor which appears to have impressed this Court, namely that the Additional Sessions Judge of the Link Court at Mangrulpir had given an information to this Court that 695 cases were pending before him and the Link Court hardly functions for even half a month. According to Mr. Mardikar and learned APP, that is an incorrect information and, as a matter of fact, the chart shown to me by him shows that under Section 302, there are in all fifty trials, other than Section 302, total number of sessions trials is 159, one trial under NDPS Act, trials under the Prevention of Corruption Act are 32 and, therefore, the murder trials are not more than fifty, and present trial has now been posted at Sr. No.2 in the order of its seniority of pending trials, and fixed for framing of a charge on 8th March, 2016 before the Court at Mangrulpir. Mr. Mardikar invited my attention to the

order made by this Court in Criminal Application [BA] No. 62 of 2015 to oppose the present bail application, and per contra, Mr. Daga, learned counsel for the applicant, submitted that the role of assaulting the deceased Avinash has been wrongly attributed to the applicant.

I have considered the submissions made by the learned counsel for the rival parties and perused various orders passed by this Court as well as the Co-ordinate Bench.

It appears that in the earlier bail application filed by the applicant, this Court had recorded that Devidas was the deceased, which seems to be wrong, and it was Avinash, who was actually the deceased in accordance with the case of the prosecution. I, therefore, think that the second bail application would be maintainable due to occurring of the said mistake.

In so far as the second aspect about the applicant having been found to be a member of unlawful assembly is concerned, I find that by the earlier orders the other accused persons, who were the members of an unlawful assembly, were released on bail, and in particular in relation to assault on Devidas. Therefore, on this ground, second bail application cannot be thrown out.

Third objection that, in fact, 695 Sessions Trials are not pending and only fifty sessions trials are pending for offence under Section 302, Indian Penal Code, though

seems to be correct, and the sessions trial of the applicant is fixed at Sr. No.2 in order of seniority and it is posted for framing of charge, does not impress me. The reason is that even taking up fifty sessions trials at a Link Court would consume not less than two years and the other trials with the Sessions Judge or Special Judge, who is also a Link Court, cannot be kept aside only for taking up the sessions trials involving murder cases. The fact remains that the trial is bound to take considerable time and the applicant has been in jail for the last two years, all the more so because those who assaulted Devidas are on bail.

In so far as the injuries to Devidas are concerned, it is true that he was in the hospital for some more days and appears to have undergone surgery for head injury and for a mandible fracture. But looking to the period mentioned in para 8 of the reply and the thrombosis in the vein, there is nothing serious about that aspect of the matter in order to refuse grant of bail, particularly when all other similarly situated accused persons have been granted bail by this Court and the Co-ordinate Bench. The bail application filed by Arun Pawar was rejected, as he was found to have been involved in commission of murder of Avinash, which is not the case at hand. At any rate, the condition of prohibiting the applicant from entering the concerned area would definitely take care of the prosecution witnesses and the interest of the prosecution. In that view of the matter, I think, there is no point in rejecting the bail application

filed by the present applicant, Bandu, who is similarly situated. In that view of the matter, I make the following order:-

ORDER

- [a]** Criminal Application No. 82 of 2016 is **allowed.**
- [b]** Applicant, Bandu Fakira Jadhao, be released on bail in Crime No. 38/2014 registered with Police Station, Manora, Distt. Washim, for offences punishable under Section 147, 148, 302, 307 read with Section 149 of Indian Penal Code, on his executing a Personal Bond in the sum of Rs. 20,000-00 [rupees twenty thousand only] with one surety in the like amount.
- [c]** The applicant shall not enter the area of Police Station, Manora, Distt. Washim, during the pendency of the trial, except on the appointed dates.

Judge

