

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

Criminal Application No. 52 of 2015

[Pravin S/o Bansilal Sharma Vs. Pankaj S/o Nilkanth Dongardive and anr.]

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

Court's or Judge's order

Shri N. R. Tekade, Advocate for the applicant
Shri P. V. Bhoyar, APP for the non-applicant no. 2

CORAM : Prasanna B. Varale, J.

DATE : 23-2-2016.

Heard Shri Tekade, learned counsel for the applicant and Shri Bhoyar, learned Additional Public Prosecutor for the non-applicant no. 2 - State.

This Court by order dated 25-8-2015 issued notice to the non-applicant no. 1, making the same returnable on 8-9-2015. By order dated 11-1-2016, the learned Single Judge of this Court thought it fit to direct the Registry to place the present application before this Court. Accordingly, the matter was placed before this Court on 12-2-2016. This Court, on 12-2-2016, considering the prayer of the applicant seeking cancellation of bail of the non-applicant no. 1 on the ground of misrepresentation of facts, granted one more opportunity to the non-applicant no. 1 and it was made clear that if none appears on behalf of the non-applicant no. 1 on next date, the application is decided on its own merits without issuing further notice. In spite of grant of opportunity, none appears for the non-applicant no. 1 today.

.....2/-

The applicant who is the original complainant is before this Court seeking cancellation of bail granted to the non-applicant no. 1.

The non-applicant no. 1 approached this Court seeking his enlargement on regular bail by presenting Criminal Application No. 196/2015. This Court passed following order.

“After arguing the matter for quite some time, Shri Thakur, the learned Counsel for the applicant seeks permission to withdraw the application.

Permission granted.

Criminal Application is accordingly allowed to be withdrawn.”

The order of this Court was passed on 7-5-2015. The non-applicant no. 1 approached the learned Sessions Judge by presenting application under Section 439 of the Criminal Procedure Code for grant of bail. The application was filed on 18-5-2015 i.e. immediately within a span of a week or so after the withdrawal of the application presented before this Court. It was stated in the application that co-accused Baban, Ganesh and Pramod are released on bail by the High Court. It was further stated that the bail application was moved by the applicant before the High Court for granting bail and the same was withdrawn. It was further stated in the application that “applicant intends to move this Hon'ble Court by bringing more facts and circumstances and observations of Hon'ble High Court while granting bail to co-accused persons.” The bail application was opposed by the

.....3/-

State by filing their say. It was submitted by the State that initially the report lodged at the instance of the complainant and the crime was registered for the offences punishable under Sections 307, 147, 148 and 149 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act. It was then submitted that the injured victim Manoj succumbed to the injuries during the treatment, accordingly, offence was converted into an offence punishable under Section 302 of the Indian Penal and other offences were added, namely, 212 and 201 of the Indian Penal Code. It was then submitted that the non-applicant no. 1 is having major role in the commission of offence as iron rod was recovered at the instance of the non-applicant no. 1. It was then submitted that the other accused are absconding and if the non-applicant no. 1 is released on bail, the possibility cannot be ruled out that he may pressurize the witnesses. The learned Sessions Judge by order dated 29-6-2015 considering the bail application of the non-applicant no. 1 though referred to the reasons of opposition reflected in the say of the State proceeded to decide the application on the ground of parity as it was claimed by the non-applicant no. 1. The learned Sessions Judge observed that the non-applicant no. 1 has filed the successive bail application and as such, the non-applicant no. 1 was to show the change in circumstance and that change in circumstance was submitted by raising ground of parity. The learned Sessions Judge by observing that

.....4/-

“I have perused the order passed by the Hon'ble High Court in the bail petition of the co-accused Baban, Ganesh and Pramod.” The learned Sessions Judge then observed that “the case of the present applicant stands on an identical footing of the co-accused Baban, Ganesh and Pramod. Suffice it to say that, the ground of parity has been made out.” The learned Sessions Judge thus allowed the application and granted bail to the non-applicant no. 1 on certain conditions.

Shri Tekade, learned counsel for the applicant vehemently submitted that the non-applicant no. 1 firstly by misrepresentation of the facts approached the learned Sessions Judge for seeking grant of bail. Other submission of Shri Tekade, the learned counsel is the learned Sessions Judge failed to appreciate the material against the non-applicant no. 1 and by a general observation that as this Court granted bail to other co-accused Baban, Ganesh and Pramod, granted bail to the non-applicant no. 1 without considering the material against the non-applicant no. 1.

Shri Bhoyar, the learned Additional Public Prosecutor supports the submissions of the learned counsel for the applicant. The learned Additional Public Prosecutor also by inviting my attention to the reply filed by State submits that as this Court was not inclined to enlarge the non-applicant no. 1 on bail considering the material against him, the non-applicant no. 1 sought withdrawal of the bail

.....5/-

application. The learned Additional Public Prosecutor submitted that there is sufficient material to show involvement of the non-applicant no. 1 in commission of a serious crime wherein the offence under Section 302 of Indian Penal Code is committed.

In view of the submissions of Shri Tekade, learned counsel for the applicant and Shri Bhoyar, learned Additional Public Prosecutor, I have also gone through the material placed on record and the reply filed by the State. This Court by order dated 7-5-2015 allowed the non-applicant no. 1 to withdraw the bail application. This Court had an occasion to consider the bail applications of other accused, namely, Ganesh and Pramod on the very day i.e. on 7-5-2015. Insofar as the application of Ganesh was concerned, this Court found the material in the initial statements against Ganesh that he was present on the spot with a stick. This Court further found that insofar as role of Ganesh was concerned, there was difference in the version of eye witness. This Court on the backdrop of the medical evidence found that the victim who was immediately admitted to the hospital and was subjected to medical examination, there was no reference of any stick injury caused to the victim reflected in the medical certificate.

Insofar as bail application of Pramod was concerned, this Court on consideration of the material found that there was not even reference of

.....6/-

Pramod in the First Information Report and his entry on the scene was subsequently reflected in the supplementary statement. Insofar as the role of other accused Baban is concerned, this Court on consideration of the material found that in the report lodged at the instance of the complainant on 4-6-2014, the role attributed to Baban was of having his presence on the spot with a stick. This Court further found that the complainant Pravin in his report only states about the presence of Baban on the spot with stick but attributes no role to Baban. This Court, in view of the submissions of the learned Additional Public Prosecutor, gone through the statement which was recorded by the investigating agency and found that there was a general statement made by the complainant that Baban was present on the spot along with accused and general statement was made that Baban also participated along with Pramod and Ganesh. This Court observed that “it is interesting to note that Pravin in his supplementary statement recorded on the very day expanded his version with a role attributed to one other accused Golu Ganjare.” Thus this Court was of the opinion that there was addition of the material in supplementary statement which was not finding place in the report lodged at the instance of Pravin and the role attributed against Baban was of having his presence on the spot. This Court observed on the backdrop of the medical evidence that the medical certificate do not show a single mark of stick blow.

.....7/-

This Court on consideration of the material found that there was specific reference of other accused who were carrying sword, iron rod and knife and led the attack on the victim. Non-applicant no. 1 was one of those accused who were carrying weapon like iron rod in his hand. The investigation reveals that the weapon was recovered at the instance of the non-applicant no. 1. Thus this Court, on assessment of the material against each of the applicants, namely, Baban, Ganesh and Pramod, allowed their applications and granted bail.

The learned Sessions Judge only refers that he perused the order passed by this Court in bail petitions of Baban, Ganesh and Pramod and then arrived at the conclusion that the case of the applicant (before the Sessions Court and non-applicant no. 1 before this Court) stands on a identical footing of co-accused Baban, Ganesh and Pramod. The observations of the learned Sessions Judge thus are neither in consonance with the record nor in consonance with the observations of this Court. This Court specifically observed the material against the other accused. This Court found that the material reflected the role attributed to other co-accused of their presence and having sticks in their hands and this Court further found that medical evidence was not supporting the statement about the use of stick, the material against the co-accused and the material against the non-applicant no. 1 clearly differs. It is also the fact that the respondent – State

while opposing the bail application submitted that there is a recovery of weapon viz. iron rod at the instance of the non-applicant no. 1.

Considering all these facts, in my opinion, the order passed by the learned Sessions Judge is unsustainable and requires indulgence of this Court. The learned Sessions Judge failed to appreciate the material against the non-applicant no. 1 and only on the ground raised by the non-applicant no. 1 of parity allowed the application when the material clearly show that the non-applicant no. 1 could not have claimed any parity with the other accused. In the result, the application is allowed.

The order passed by the Additional Sessions Judge, Akola dated 29-6-2015 enlarging the non-applicant no. 1 Pankaj Dongardive on bail is set aside.

The non-applicant no. 2 - State to take necessary steps in view of the order passed above.

Authenticated copy of this order be supplied to the learned Additional Public Prosecutor.

JUDGE

wasnik

...../-