

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

CRIMINAL APPLICATION (BA) NO. 799 OF 2017

(Maruti Bandu Palakwar..vs..State of Maharashtra, through PSO.PS.Pandharkawada,Tahsil-Kelapur,District-Yavatma.)

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

Court's or Judge's orders.

Shri M.N.Ali, Advocate for applicant.

Shri T.A.Mirza, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J

DATED : AUGUST 24, 2017

This is an application for bail.

2] Heard learned counsel for the applicant and learned A.P.P. for State.

3] The applicant is arrested on 1/3/2017 in connection with Crime No.174/2017 registered with P.S.Pandharkawda,Tahsil-Kelapur,District-Yavatmal, for the offence punishable under Sections 302,326,120-B, 143,147, 148,149 r/w Section 34 of the Indian Penal Code.

4] The investigation is already over and chargesheet is already filed. In the chargesheet, the applicant is shown as accused no.5.

5] The F.I.R. is lodged by Vikram S/o Subhash Jadhao who was accompanying deceased Pankaj Madkam at the time of assault.

6] As per F.I.R. on 24/2/2017, first informant and deceased were roaming in the city on two wheeler. When they were on road proceeding towards Aakhada Ward, that time accused nos. 1,2 and 3 whose names are specifically mentioned in the F.I.R. stopped the vehicle on which deceased and the first informant were sitting. Thereafter these three persons made a murderous assault on Pankaj. When the first informant tried to intervene in the said assault, he was also assaulted by accused Kunal.

7] According to prosecution during the course of investigation, the presence of the present applicant is also noticed as per the CCTV footages. The learned A.P.P. invited my attention to paragraph no.12 of the order passed by the learned Judge of the Court below under which the application for bail of the present applicant is rejected. The said shows that the learned Judge himself has seen the CCTV footages personally. However even after that it is not noticed by learned Judge that the present applicant has actually assaulted deceased or first informant. His presence is only seen.

8] The question whether applicant was sharing common intention or not is a matter of trial and it will be decided during the course of trial itself only. Further, at the present stage at the time of consideration of bail application prima facie Court is required to see the nature of the accusations made against the applicant. It is clear that the applicant has not assaulted deceased or first informant nor there are allegations that he facilitated the co-accused persons

to make murderous assault on the deceased. There is no recovery at the behest of the applicant is the submission of learned A.P.P. on the basis of final report.

9] Since the chargesheet is filed and looking to the facts that there are no allegations that applicant has made murderous assault in my view, further incarceration in jail is not required. Further, he can be released on some conditions to protect the interest of the prosecution.

10] The learned counsel for applicant pointed out to me that this Court in Criminal Application (BA) No.738/2017 has granted bail in favour of co-accused Mahendra Govind Rajgadkar. His submission is that role attributed to Mahendra and the role attributed to the present applicant is identical. To this aspect, the learned A.P.P. submits that the submission made on behalf of the applicant is correct. Therefore, I pass the following order.

ORDER

- I) The application is allowed.
- II) Applicant Maruti Bandu Palakwar be released in Crime No.174/2017 registered with P.S. Pandharkawda, Tahsil-Kelapur, District-Yavatmal, for the offence punishable under Sections 302, 326, 120-B, 143, 147, 148, 149 r/w Section 34 of the Indian Penal Code on his executing P.R. of Rs. 25,000/- with two solvent sureties in the like amount.

- III) The applicant shall attend P.S.Pandharkawda, Tashil-Kelapur, District-Yavatmal once in a week i.e. last Friday of every month in between 3.00 p.m. to 5.00 p.m. till culmination of the trial.
- IV) The applicant shall not indulge in any criminal activities which will prejudice to the prosecution.
- V) With this the application is disposed of.

JUDGE

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