

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

Criminal Application [BA] No.231 of 2018

Aditya Rajesh Wankhede

vs.

State of Maharashtra, through P.S.O. Murtizapur (Rural), District Akola

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

Court's or Judge's Orders

Shri R.M. Daga, Advocate for the Applicant.

Shri V.P. Gangane, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.

DATE : 5th APRIL, 2018.

Heard.

Perused the reply of the prosecution and the charge-sheet. This application seeking regular bail filed on behalf of the applicant by his learned Counsel Shri Daga has been solemnly affirmed by the wife of the applicant. Curiously enough, the wife of the applicant was the informant. She lodged the report against this applicant immediately after the incident, which took place on 24/02/2017. It was alleged in the report that as the father-in-law of the applicant refused to let his daughter, who is the wife of the applicant, go along with the applicant to his house, at that time, wife of the applicant was residing at village Sirso, the parental place of the wife, the applicant got annoyed and assaulted his father-in-law by dealing a blow of axe to his head. Further blows with the handle of axe were dealt to the upper limb and lower limb of the father-in-law. Later on, father-in-law succumbed to the injuries that he sustained in the assault. This incident was witnessed by the wife and mother-in-law of the applicant. But, now the situation

appears to have changed. It is the informant-wife, who has come forward for seeking bail of this applicant. It is stated that on behalf of the applicant by his learned Counsel, the wife of the applicant had filed an affidavit before the trial Court to claim that this applicant did not commit any crime.

The learned Counsel for the applicant submits that the wife of the applicant has returned to his house and has been staying there, of course, without this applicant along with her son aged about 1½ years. He submits that the wife has no qualification to independently earn anything and she has to depend upon the labour work for providing for herself and her son. He further submits that if the applicant is released on bail, it would be a great respite for her and also the son, because in the absence of wife, there is no one to take care of the son. He further submits that the applicant's wife and mother-in-law both are personally present in the Court just to show their support for the applicant.

The learned Counsel for the applicant also places reliance upon the case of Prassanna Venkardari Agrahar vs. State of Maharashtra – (2017) 5 SCC 648 in order to advance an argument that affidavit of the witness can be considered while exercising discretion regarding bail.

Ordinarily, I would not have been inclined to allow this application at this stage. But, the fact situation being unusual, I am persuaded to exercise discretion in favour of the applicant by releasing him on bail for the following reasons :

Firstly, the incident appears to have taken place out of sudden provocation. This would create *prima facie* a possibility of the case falling within the scope and ambit of Section 304 of Indian Penal Code.

Secondly, the wife of the applicant as well as mother-in-law of the applicant, the only two eye witnesses to the incident, are now giving their support to the applicant. Both of them are present in the Court and the statement made in this regard by the learned Counsel for the applicant has to be accepted and it is accepted by me.

Thirdly, there is also a humanitarian dimension involved in this case, because in the absence of the applicant, there is a possibility of the further damage being caused to the family of the applicant, which now appears to be coming back to the track after the fractures in the marital relations had disturbed the family.

Fourthly, the applicant has been in jail for a period of more than one year and the charge is yet to be framed as submitted by the learned Counsel for the applicant. The charge-sheet in this case was filed in May, 2017 and still no charge has been framed. This would also indicate that there could possibly be a delay in the trial.

Fifthly, in an appropriate case, as has been found by the Hon'ble Apex Court in *Prassanna's* case, affidavits of witnesses can be taken into consideration and to my mind, this would be the case wherein this application supported by solemn affirmation of wife of the applicant, can be taken into account.

Accordingly, the application is allowed. It is directed that the applicant be released on bail on his furnishing a P.R. Bond of Rs.30,000/- together with one solvent surety in the like sum on the following conditions:

- I. The applicant shall attend Police Station Murtizapur, District Akola on every Sunday

between 05:00 p.m. and 06:00 p.m. till the conclusion of the trial.

II. The applicant shall not and shall make no attempt to, discuss the case with or influence the prosecution witnesses in any manner.

III. The applicant shall co-operate with the trial Court in expeditious disposal of the case.

The application is disposed of in the above terms.

JUDGE

**sandesh*