

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

CRIMINAL APPLICATION (BA) NO. 558 OF 2019
(Ashish S/o. Sahebrao Shirsat vs. State of Maharashtra,
Through PSO, P.S. Khadan, District Akola)

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

Court's or Judge's orders

Shri. R. M. Daga , Advocate for the applicant
Shri. A. D. Sonak, APP for the respondent State

CORAM : Manish Pitale J

DATED : July 29, 2019

This is a second application filed by the applicant for grant of bail.

2. The applicant has approached this Court for grant of bail as he stood arrested on 16.12.2017, in connection with FIR dated 15.12.2017, pertaining to offences under Sections 302, 325, 323, 120(B) of the Indian Penal Code. There are three other co-accused persons and it is not in dispute that all of them have been released on bail.

3. The learned counsel for the applicant invited attention of this Court to oral report dated 15.12.2017, given by the complainant, wherein the incident was described. It was stated that the applicant had used knife to assault the victim on his chest, while co-accused Akash @ Fev had assaulted the victim by way of knife on his abdomen. There was no specific role of use of weapons attributed to other two co-accused persons.

4. The learned counsel for the applicant has also invited attention of this Court to the Post-Mortem Report, which records stab injuries to the chest and abdomen and it is specifically recorded that the cause of death were the two aforesaid injuries suffered by the victim on his chest and abdomen. Thereafter, the learned counsel for the applicant has invited attention of this Court to the statement made by the aforesaid complainant under Section 164 of the Cr.P.C. In this statement, the roles attributed to the applicant and co-accused Akash @ Fev have been reversed. It is stated in this statement that the applicant had assaulted the victim on his abdomen, while it was co-accused Akash @ Fev, who had caused the injury to the chest of the victim. Thereupon, the learned counsel for the applicant invited attention of this Court to the order dated 08.03.2019, passed by this Court in favour of co-accused Akash @ Fev, whereby bail was granted to him on specific conditions. In the said order, this Court has taken into account the material on record and opined that Akash @ Fev could not be said to be author of the crime. It was perhaps due to the discrepancy in the initial oral report and specific statement under Section 164 of Cr.P.C. given by the complainant that this Court passed an order in favour of co-accused Akash @ Fev.

5. The same discrepancy clearly arises in so far as the present applicant is concerned because while in the oral report leading to registration of FIR, the applicant is said to have stabbed the victim on his chest

while in the statement under Section 164 of the Cr.P.C., it stated that the applicant caused the stab injury on his abdomen. Therefore, on the ground of parity, the applicant deserves the same relief, as granted to co-accused Akash @ Fev.

6. The learned APP could not point out as to why the applicant could not be granted the benefit of parity and there is nothing on record to show that order dated 08.03.2019, passed in favour of the co-accused Akash @ Fev was either challenged or set aside. In view of the above, the present application is allowed and the applicant is directed to be released on bail in Crime No. 594 of 2017, registered in Police Station Khadan Dist. Akola on the following conditions :-

(a) The applicant shall furnish P.R. bond of Rs.50,000/- (Rupees Fifty Thousand only) and a surety in the like amount.

(b) The applicant shall not enter in Akola Town, till the decision of the trial except the dates fixed by the trial Court.

(c) The applicant shall attend the Trial Court on each and every date of the proceedings.

(d) The applicant shall not leave the jurisdiction of the trial Court without prior permission.

(e) The applicant shall provide his mobile

number and address to Police Station Khadan Dist. Akola about his residence outside the town.

7. Needless to say that in case of violation of any of the conditions imposed by this Court, the bail granted to the applicant shall stand cancelled.

8. It is clarified that the observations made in this order are limited to the question of grant of bail to the applicant.

(JUDGE)

MP Deshpande