

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

CRIMINAL APPLICATION (BA) NO. 150 OF 2020

Gajanan /o Ramkrishna Kumre

vs.

The State of Maharashtra through PSO PS Yavatmal City, Tah. & Dist. Yavatmal,

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

Court's or Judge's orders

Shri. M. P. Kariya, counsel for the applicant.
Shri. S. S. Doifode, APP for the non-applicant State.

CORAM : MANISH PITALE J.

DATED : 28/08/2020

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant herein has approached this court seeking bail. He has been arrayed as one of the accused in FIR dated 30/12/2018 for offences punishable under Section 302 read with 120-B and 34 of the Indian Penal Code (IPC). The applicant was arrested on 03/01/2019 pursuant to registration of the FIR.

3. The main contention raised on behalf of the applicant is that there is a glaring contradiction between the oral report leading to registration of FIR and the statement made by the complainant under Section 161 of the Cr.PC., on the one hand and in her statement

recorded under Section 164 of the Cr.P.C. on the other hand.

4. Attention of this Court was invited to the oral report leading to registration of the FIR as also the statement made under Section 161 of Cr.P.C. The complainant who is the widow of the deceased emphatically stated in the oral report as well as the statement under Section 161 of the Cr.P.C. that the applicant herein and another accused Bhima Khade had brutally assaulted her husband by means of sharp edged weapons. It is on the basis of such an emphatic claim made by the complainant that the applicant stood arrested on 03/01/2019.

5. By inviting attention of this Court to the statement under Section 164 of the Cr.P.C. recorded on 22/01/2019, the learned counsel appearing for the applicant vehemently stated that the complainant herself specifically stated that she came to know about the names of the applicant and accused Bhima Khade only from the police. In this statement the applicant placed the blame of the injuries suffered by her husband on three other accused persons with whom the husband of the complainant had allegedly an altercation. On this basis it was submitted that the applicant deserves to be enlarged on bail.

6. The learned APP opposed the present application primarily on the ground that recovery of

Knife and Axe had taken place on the basis of statement of the applicant recorded under Section 27 of the Evidence Act and further that blood stained clothes were recovered at the behest of the applicant. It was further pointed out that a shirt recovered in the process of investigation showed that there were certain buttons that had been torn off and same had been found at the place of the incident. According to the learned APP this was clinching material showing involvement of the applicant in the incident in question and that therefore, he did not deserve to be enlarged on bail.

7. Having heard the learned counsel for the parties and upon perusal of the material on record it becomes evident that the statement of the complainant under Section 164 of the Cr.P.C. is totally at variance with the claim made by her in her oral statement leading to registration of FIR, as also her statement recorded under Section 161 of the Cr.P.C. While in the oral statement and the statement recorded under Section 161 of the Cr.P.C., the complainant placed the blame entirely upon the applicant and another accused, in the statement made before the Magistrate under Section 164 of the Cr.P.C., the complainant place entire blame for the incident on three other accused persons, while emphatically stating that she heard the names of the applicant and another accused Bhima Khade from the police itself. The aforesaid emphatic statement made by the complainant in her statement recorded under Section

164 of the Cr.P.C. would indicate that she was not aware about the names of the applicant when the incident took place and she came to know about the same for the first time from the police.

8. The manner in which the complainant has described the incident in her statement under Section 164 of the Cr.P.C., shows that she has placed the entire blame for the injuries suffered by her husband on three other accused persons, without showing any involvement of the applicant in the incident in question.

9. Such glaring contradiction needs to be taken into consideration by this Court while considering the present application of bail. It does indicate that the whole basis for placing the blame on the applicant for the alleged incident is shaken to a large extent.

10. In so far as the clinching material relied upon by the learned APP is concerned regarding sharp edged weapons and blood stained clothes at the instance of the applicant, that in itself would not wipe out the aforesaid glaring contradiction available on record. Even otherwise, now that the recovery was completed and the investigation was over, this was another factor ought to have been taken into consideration while considering the question of grant of bail to the applicant.

11. In view of the above, this Court is of the opinion that present application deserves to be allowed in following terms :-

(A) The applicant is directed to be released on bail on furnishing PR bond of Rs.25000/- and surety in the like amount.

(B) The applicant shall not enter jurisdiction of police station Yavatmal City during the pendency of the trial.

(C) The applicant shall report at police station, Vadgaon District Yavatmal on every first and fourth Monday of each month between 10.00am. To 5.00pm. during the pendency of the trial.

(D) The applicant shall attend the proceeding before the Trial Court on each and every date of the trial.

(E) The applicant shall not in any manner tamper with the evidence or seek to influence the witnesses.

12. Needless to say, violation of any of the aforesaid conditions would make the applicant liable for cancellation of bail.

13. It is further made clear that observations made in the present order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made by this Court.

14. The application is disposed of in above terms.

15. The order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE