

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

CRIMINAL APPLICATION [BA] NO. 216/2020.

Amit @ Paydhuwa Prabhakar Kumre

-VERSUS-

The State of Maharashtra

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

Court's or Judge's Orders

Shri M.N. Ali, Advocate for the Applicant.
Mrs. M.A. Barabde, A.P.P. for the Non-applicant – State.

CORAM : VINAY JOSHI, J.

DATE : JULY 20, 2020.

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

2. The applicant is seeking regular bail in connection with offence registered with Ramnagar Police Station bearing Crime No. 466/2019, relating to offence punishable under Sections 143, 144, 147, 148, 149 and 307 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act. The applicant claimed bail on usual grounds like innocence, false implication etc. In addition to this, the applicant is

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claiming bail on the ground of parity by pointing out release of co-accused Yash Parate by the Sessions Court vide order dated 21.01.2020.

3. The learned Counsel for the applicant has submitted that there is inconsistency in the statements, since the injured had stated that the applicant had beaten him by fist-blows, whilst eye witness states that the applicant was holding hockey stick. Moreover, it is stated that all the injuries which are mentioned in the medico legal certificate shows that they were caused by sharp edged weapon.

4. The State has resisted the bail by submitting that the applicant has played a vital role in the commission of the crime. It is submitted that the applicant is a history sheeter against whom three other offences were registered in the past. Moreover, the State has canvassed that the applicant was externed from Wardha District for a period of two years from 01.01.2018, and during said period, in contravention of the order of externment, he entered into the Wardha District and committed crime.

5. At the instance of FIR lodged by the injured himself, an offence came to be registered. The

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injured stated that on the date of occurrence, total 6 assailants who were armed with different objects, accosted him and made deadly assault, Particularly applicant Amit, beat him by fist-blows, whilst other beat by different objects. The police have recorded dying declaration of the injured which can now be termed as a previous statement since injured survived, wherein injured has stated role of applicant of beating by fist-blows. There are some eye witnesses who have stated that at the relevant time, the applicant was seen to be holding hockey stick.

6. Co-accused Yash came to be released by the Sessions Court vide order dated 18.03.2020, i.e. after filing of the charge sheet. The applicant is claiming release by invoking the rule of parity. Police paper discloses that there are direct allegations against Yash of assaulting injured by means of sword. The injury certificate discloses that there are 4 simple injuries caused by sharp edged weapon.

7. No doubt, the role ascribed to the applicant is of lesser degree since he assaulted either by fist blows or was seen with hockey stick at the relevant time.

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8. Learned A.P.P. tried to distinguish the applicant's case from Yash by submitting that the applicant while was externed, had entered into Wardha District and committed offence. The said fact cannot be denied, but, one has to see what is the impact of the same. If the applicant has contravened the order of externment, certainly it is a cause of action to take appropriate action against him, in accordance with law. However, that cannot be a sole reason to deny him bail on the rule of parity. So far as some other offences registered against the applicant, the chart of offences shown against Yash runs long then applicant.

9. The allegations against co-accused Yash and Tushar are of assaulting by sword and knife, whilst role of applicant is of lesser degree. The medical evidence prima facie supports the role played by the co-accused and not of the applicant. The applicant is entitled to get benefit of rule of parity.

10. Having regard to the peculiar facts, the applicant can be released on bail by imposing certain terms and conditions. Criminal Application is accordingly allowed and following order is passed,

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- (i) The applicant/accused Amit @ Paydhuwa Prabhakar Kumre, be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.
- (ii) The applicant/accused shall not enter the municipal limits of Wardha District till the conclusion of trial.
- (iii) The applicant accused shall provide his residential address and cell number to the concerned investigating officer, and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- (iv) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

11. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Rgd.