

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

LD-VC-CRIMINAL APPLICATION [BA] NO. 306/2020

Tushar S/o Prabhakar Rao Badalamwar

-VERSUS-

State of Maharashtra, through P.S.O. Police Station

WITH

LD-VC-CRIMINAL APPLICATION [BA] NO. 409/2020

Naveen Gajanan Tirpude (Jail)

-VERSUS-

State of Maharashtra, through P.S.O. Police Station

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 in Criminal
Application (BA) No. 306/2020.

Shri S.A. Chaudhari, Advocate for the Applicant in Criminal
Application (BA) No. 409/2020.

Shri N.H. Joshi, A.P.P. for the Non-applicant in Criminal
Application (BA) No. 306/2020.

Shri S.S. Doifode, A.P.P. for the Non-applicant in Criminal
Application (BA) No. 409/2020.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 24, 2020.

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

2. These bail applications are arising out of Crime No.
466/2019 registered at Ramnagar Police Station, Wardha relating
to the offence punishable under Sections 143, 144, 147, 148, 149

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and 307 of the Indian Penal Code read with Sections 4 and 25 of the Indian Arms Act. One Tushar Badalamwar is the applicant in Bail Application No. 306/2020 whilst co-accused namely Naveen Tirpude is the applicant in Bail Application No. 409/2020. Both applicants are claiming bail on usual grounds along with certain additions.

3. At the instance of report lodged by informant Pawan Khadse, the crime came to be registered. Soon after the occurrence, injured Pawan Khadse was hospitalized where his statement came to be recorded. He has stated that on 12.07.2019 around 8.00 p.m. assailants came by riding on motor-bikes and assaulted him. At that time, co-accused Yash Parate (released on bail) assaulted informant Pawan Khadse near his left eye by means of sword whilst applicant Tushar Badalamwar assaulted at his waist i.e. lumber region by means of knife. He further added that other co-accused (including Naveen) had beaten him by means of fists blows and kicks and accordingly tried to commit his murder. The injury certificate is produced on record which shows that victim Pawan Khadse sustained in all four injuries, all are caused by sharp edged weapon.

4. Learned counsel appearing for applicant Tushar Badalamwar apart from merits, had also claimed bail by applying rule of parity. He would submit that co-accused Yash Parate to whom similar role was assigned has been released on bail by the

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Sessions Court vide order dated 18.03.2020 and therefore, he deserves for same treatment. Likewise, Advocate Chaudhari appearing for applicant Naveen has also claimed bail on the ground of parity by pointing release of co-accused Yash and one Amit Kumre, who has been released by this Court vide order dated 29.07.2020. Both learned Additional Public Prosecutors have tried to distinguish the role of present applicants from the released accused to impress that the rule of parity would not apply.

5. So far as, applicant Tushar Badalamwar is concerned, the injured has stated that applicant Tushar Badalamwar has assaulted him by means of knife at his lumber region causing bleeding injury. Advocate Ali for applicant Tushar Badalamwar attracted my attention to the statement of one of the eye-witness namely Pramod Thombre to show that his statement is contradictory to the statement of injured. Initially, he took me through the statement of Pramod recorded under Section 164 of the Criminal Procedure Code. In said statement though, eye-witness stated that co-accused Yash and applicant Tushar Badalamwar assaulted victim, however, he has differently stated the weapon. Likewise, his statement recorded under Section 161 of the Criminal Procedure Code also speaks of different weapon than what has been stated by the victim.

6. It reveals from the statement of victim that Yash

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assaulted by means of sword, whilst Tushar by means of knife. Though one of the witness Pramod stated different weapon used by the assailants, however, it is matter of appreciation at the time of trial. I am not inclined to undertake unwarranted exercise of appreciating alleged inconsistency at the time of deciding bail applications. Suffice to say that even eye-witness Pramod has stated that Yash as well as Tushar Badalamwar both have dealt blows on the victim with dangerous weapon.

7. Bail application of Tushar is mainly pressed on the premise of rule on parity. Admittedly, Yash was released by Sessions Court on bail vide order dated 18.03.2020. On perusal of said order, it reveals that his tender age of 19 years and forthcoming examination has weighed as one of the consideration for Sessions Judge while releasing Yash on bail. The learned counsel for the applicant is quick enough to respond that applicant Tushar is also of similar age i.e. of 23 years and therefore, he is also entitled on premise of age. Moreover, it is pointed out that there are total 11 offences registered against Yash whilst only 8 offences are registered against applicant Tushar Badalamwar.

8. So far as the role of Yash (released on bail) is concerned, he dealt sword blow near left eye of the victim. Pertinent to note that applicant Tushar dealt knife blow at the waist of the victim which can be considered to be vital part of the

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body. Though, allegations against both of them are of similar nature about use of dangerous weapon, however, the part chosen of the body also matters much.

9. Reading of bail order of Yash discloses that the factor of tender age and upcoming examination has influenced the Sessions Court while arriving on the conclusion of entitlement of bail. Beside, the similar age group, the other factor is missing. Learned Additional Public Prosecutor pointed that after releasing on bail, Yash Parate has assaulted eye-witness of this case namely Pramod Thombre for which the Crime No. 421/2020 for an offences punishable under Section 307 of the Indian Penal Code has been registered. It is pertinent to note that co-accused Yash who belongs to same group after release has dared to had deadly assault on the eye-witness. Though, Advocate Ali appearing for applicant Tushar submitted that he cannot be blamed for the assault made by another accused, I am concerned about the safety of witness of this case. The story as emerges discloses that all assailants belongs to one group. The applicant Tushar and Yash appears to be more harsh as both of them assaulted victim by means of dangerous weapon. The tendency of Yash who has used sword in crime had even after release on bail had tried to eliminate one of the eye-witness. The possibility of repeating such instance at the hand of Tushar cannot be ruled out, since he had also used dangerous

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weapon while committing existing crime. Certainly, this factor has to be taken into account instead of thinking mathematically.

10. Having regard to the role of Tushar Badalamwar of using knife, part achosen of the body and absence of specific advantages like Yash to say his tender age and examination, it is not in the interest of society to release applicant Tushar Badalamwar on bail. There is strong possibility that again there may be some further untoward incident at his instance. Therefore Tushar Badalamwar is not entitled for bail on any count. Having regard to the current pandemic situation as the working on Trial Court is held up, the applicant Tushar Badalamwar is at liberty to move for bail before this Court or Sessions Court if trial has not commenced within three months from today.

11. As regards to applicant Naveen is concerned, his role as stated by victim is of beating by fists blow and kicks. This Court has considered role of co-accused Amit of similar nature exhaustively and released him on bail vide order dated 20.07.2020. Moreover, as compared with Yash, role of Naveen is of lessor degree. Advocate Chaudhari has fairly stated that though mistakenly he has mentioned in the application that there are no antecedent of applicant Naveen, however, there are two prior offences. Be that as it may, two previous crimes alone cannot be considered as a sufficient ground to reject his bail if otherwise he is entitled for.

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Therefore, applicant Naveen is entitled for bail on merits as well as on parity. In view of that I pass the following order:

i) Bail application No. 306/2020 of Tushar Prabhakar Rao Badalamwar stands rejected.

ii) Bail application No. 409/2020 of Naveen Gajanan Tirpude is allowed.

iii) The applicant/accused namely Naveen Gajanan Tirpude is released on bail on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount.

(iii) Applicant/accused namely Naveen Gajanan Tirpude shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

iv) Both Bail Applications disposed of accordingly.

12. 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

R.S. Sahare