

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

CRIMINAL APPLICATION (BA) NO. 84 OF 2021

(Kallu @ Kuldip s/o Babukeshav Tiwari ..vs.. The State of Maharashtra, through PSO Ballarsha,
Chandrapur)

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

Court's or Judge's orders

Mr. A.A. Pannase, Counsel for the applicant,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 07-09-2021

This application is preferred seeking bail in connection with Crime 92/2020 registered with Ballarshah Police Station, District Chandrapur for offence punishable under Section 302 of the Indian Penal Code.

2. The application preferred by the applicant before the Sessions Court, is rejected on merits vide an elaborate order dated 11-9-2020 rendered by the learned Additional Sessions Judge, Chandrapur. The accusation is that the applicant is an accused in Crime 1114/2018 registered under Section 326 of the Indian Penal Code. The deceased was cited as a witness. The applicant openly declared that he would kill any person who would depose against him. The applicant carried out the threat by brutally assaulting the deceased at 4-00 p.m. or thereabout on 30-1-2020 by inflicting axe blows.

3. I have considered the material on record, which

prima facie is overwhelming. The assault is brutal, and is on the head. The gravity of the crime is aggravated by the fact that the applicant was on bail when he murdered a key witness. The statements of the witnesses are consistent. Seven brain deep injuries are inflicted. The liberty granted in the earlier crime is misused. By no stretch of imagination, is the applicant entitled to discretion.

4. The application is dismissed.

5. It is disconcerting to note that the applicant is released on temporary bail by the same Judge who dismissed the bail application on merits. Perusal of the order dated 19-5-2021 rendered by the learned Additional Sessions Judge, Chandrapur reveals that bail is granted in view of the Covid-19 pandemic. Notably, bail is granted after recording that there is substantial evidence against the accused. In the interest of observing judicial restraint, I do not make any further observation, except to record that the order granting temporary bail is manifestly unsatisfactory and the learned Sessions Judge clearly failed to appreciate that there cannot be a straitjacket formula and granting temporary bail to an accused who has murdered a witness, who was to depose against him in the earlier offence, is an improper exercise of the discretion.

6. The learned Additional Sessions Judge,

Chandrapur shall pass final order on the entitlement to temporary bail, within the next ten days and shall submit a compliance report with the Registrar (Judicial) of this Court.

7. The Registrar (Judicial) shall ensure that copy of this order is forwarded to the learned Additional Sessions Judge, Chandrapur and the Principal District Judge, Chandrapur within the next seventy-two hours.

8. Despite a specific direction issued by this Court, the applicant persistently refused/avoided to remain personally present.

9. Let non-bailable warrant be issued to secure the custody of the applicant and to produce him before the learned Additional Sessions Judge, Chandrapur.

10. The Superintendent of Police shall personally ensure that the non-bailable warrant is executed within the next seventy-two hours. The registry shall do the needful.

11. The learned Additional Public Prosecutor Mr. N.R. Rode is requested to ensure that this order is communicated to the Superintendent of Police in the next twenty-four hours.

12. Steno copy of this order be supplied to the learned Additional Public Prosecutor, as per rules.

13. The application is disposed of.

JUDGE

adgokar