

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

CRIMINAL APPLICATION [BA] NO. 301/2021.

Lokesh Hemraj Wandile

-VERSUS-

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 R.K. Tiwari, Advocate for the Applicant.
Ms. N.P. Mehta, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 11, 2021.

Heard learned Counsel for the parties
through video conferencing.

2. The applicant is seeking regular bail in connection with Crime no.300/2019 registered with Old Kamptee Police Station, District Nagpur for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code. It is contended that the presence of the applicant on the spot itself is doubtful. It is argued that there is inconsistencies in the statement of eye witnesses, that too belatedly recorded after two months from

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the date of occurrence.

3. The learned Counsel for the applicant would submit that one of the eye witness has not identified the applicant, whilst other, though identified, however, has not specified the role of the applicant in the occurrence.

4. The learned A.P.P. has strongly resisted the bail by contending that the applicant has actually participated in the assault. Though two other co-accused are released on bail, their role was of different nature. According to the learned A.P.P., the applicant and co-accused Sunny have assaulted the deceased and therefore, considering the nature and gravity of the offence, bail is prayed to be rejected.

5. On 07.09.2019 police person namely Rashid has lodged a report. After receiving the information, police went to the spot and found that deceased Satish was lying in pool of blood. On enquiry the deceased made oral statement that the co-accused Sunny Chavan along with his associates

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has assaulted him. Neither name of the applicant is mentioned in the first information report nor in the statement of two eye witnesses. The entire prosecution case is based on identification of the applicant in the occurrence. Police have conducted T.I. parade on 19.11.2019 i.e. after two months from the arrest in which one of the eye witness has identified the applicant. The role ascribed by the eye witness to the applicant is that he has obstructed the deceased, whilst the co-accused Sunny dealt with blows by sharp weapon on the person of the deceased.

6. The statement of one of the eye witness Ashish Sharma recorded under Section 164 of the Code of Criminal Procedure states that the applicant was wearing helmet at the time of occurrence. Though the learned counsel for the applicant has pointed out certain inconsistencies in the statements recorded under Sections 161 and 164 of the case on the point whether the assault was by a single person or two persons, however, that can be considered at

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the time of trial.

7. Pertinent to note that as per the statement of eye witness Sharma after witnessing the incident, he has brought the police on the spot, however, for long period of two months, his statement was not recorded. It is a settled law that delay in holding TI parade loses its significance. Admittedly, none of the witnesses have stated name of the applicant. During the course of trial the prosecution has to prove the exact identity of the applicant. Though there is record regarding phone call of the applicant with the co-accused, that alone would not suffice to detain the applicant behind bars for longer period. The memorandum appears to be recorded jointly of both the accused. The applicant allegedly expressed his intention to disclose the place where he has kept blood stained clothes and mobile. As regards the weapon is concerned, a disclosure statement is made by the co-accused. The investigation is complete and charge sheet is also filed. The trial will take its own

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time for disposal. Having regard to the nature of accusation, quality of the material collected against the applicant, it is improper to keep him behind bars for longer period. In view of that following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant/accused Lokesh Hemraj Wandile is released on bail in connection with Crime no.300/2019 registered with Old Kamptee Police Station, District Nagpur for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code, on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) The applicant/accused 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.

JUDGE

Rgd.