

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

Criminal Application (BA) No. 384 of 2021

Pandurang S/o Babulal Gajbhar Vs. State of Maharashtra through P.S.O., P.S.
Karanja (Gramin)

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

Court's or Judge's orders

Mr. A.B. Mirza, Advocate for the applicant
Ms. Shamsi Haider, APP for the respondent

CORAM : MANISH PITALE, J.

DATED : AUGUST 04, 2021

By this Application, the applicant is seeking bail. This application has been listed before this Court for the reason that on an earlier occasion also, after filing of chargesheet by order dated 06/08/2019, this Court had permitted withdrawal of the bail application at the stage when arguments were over and this Court was not inclined to grant the application. By the said order dated 06/08/2019, this Court directed the trial to be expedited.

2. Thereafter, the applicant had filed a second bail application bearing Criminal Application (BA) No. 40 of 2020, before this Court. The same was rejected by this Court by order dated 14/02/2020, specifically recording that there had been no change in circumstance after the order dated 06/08/2019, was

passed by this Court.

3. Thereafter, the applicant moved another bail application before the Sessions Court, which stood dismissed by order dated 27/01/2021, passed by the said Court.

4. The learned counsel appearing for the applicant strenuously urged that despite the direction given by this Court on 06/08/2019, for expediting the trial, the matter had not proceeded much before the Trial Court and that the applicant has remained behind bars since February 2019. Apart from this, the learned counsel appearing for the applicant attempted to argue the bail application on merits, in order to contend that the role attributable to the applicant allegedly having assaulted the victim by means of stick, was not corroborated by other material on record. It was further submitted that one of the co-accused persons, who also had allegedly used stick for the assault was granted bail. Therefore, it was submitted that the present application deserved to be considered on merits and that it ought to be allowed in the interest of justice.

5. Apart from this, it was submitted that the son of the applicant is required to undergo surgery and that, therefore, bail may be granted.

6. On the other hand, the learned A.P.P. has invited attention of this Court to the earlier order and

it is submitted that there is no change in circumstances. It was emphasized that even when the earlier order dated 06/08/2019, was passed by this Court, the chargesheet along with all documents was already before this Court. On this basis, it was submitted that the present application deserves to be dismissed.

7. This Court had called for a report from the concerned Trial Court regarding the progress of the matter. The report shows that due to the pandemic and consequent lockdown, the case could not progress in an expeditious manner. The report also shows that the applicant and the accused No.1, who is also in jail, could not be produced before the Court on various dates, perhaps due to the pandemic. It is also recorded that other three accused persons, who are on bail, have remained absent on various dates. It is reported that now the matter is fixed for framing of charge.

8. There can be no dispute about the fact that there is no change in circumstances after the order dated 06/08/2019, was passed by this Court. Despite the said fact, the learned counsel appearing for the applicant made an attempt to argue the application on merits. This Court has perused the material on record and it is found that a specific role is attributed to the applicant in connection with the incident in question. He is alleged to have assaulted the victim on the portion near the left eye. The post-mortem report indicates that apart from injuries found on the parietal region, that could be attributed to the assault allegedly

made by accused No.1 by means of iron pipe, there is reference to undisplaced fractures on the frontal bone, which could be connected with the role attributed to the applicant before this Court. Apart from this, it is an admitted position that the applicant and the family of the victim are neighbors and this is also a relevant factor, while considering the question of grant of bail.

9. Apart from this, the case of other accused i.e. Mahadeo, who has been granted bail, cannot be *per se* equated with the case of the applicant, for the reason that the material on record indicates that the complainant had allegedly snatched the stick from the hands of said Mahadeo and thereafter, he had allegedly assaulted by fists and kicks. It is in the backdrop of such material that Mahadeo was granted bail by the Court.

10. Therefore, this Court is not inclined to consider the prayer for grant of bail in the present application.

11. Nonetheless, it is necessary to give appropriate directions to the Trial Court for expeditious disposal of the matter.

12. Accordingly, the present application is dismissed.

13. The concerned Trial Court i.e. the Court of Additional Sessions Judge (link Court at Mangrulpir) is

directed to take immediate steps for framing of charge in the present case. The Trial Court shall ensure that charge is framed within a period of six weeks from today. Thereafter, the proceedings before the Trial Court shall be conducted expeditiously. Considering the fact that there are 30 witnesses to be examined by the prosecution, it is expected that the Trial Court shall make an endeavour to complete the trial and deliver judgment within a period of one year from today. The Registry to inform the said Court accordingly.

14. The applicant is granted liberty to apply before the Trial Court for grant of temporary bail on the ground of health condition of his son, by placing on record appropriate documents and other material, which the Trial Court shall consider while considering such an application for grant of temporary bail, if moved on behalf of the applicant, in accordance with law.

JUDGE

MP Deshpande