

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

Criminal Application (BA) No. 387 of 2021

Hardik Dipak Urgunde Vs. State of Maharashtra Through P.S. Wani District
Yavatmal

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

Court's or Judge's orders

Mr. P.V. Navlani, Advocate for the applicant
Mr. I.J. Damle, APP for the Non-applicant / State

CORAM : MANISH PITALE, J.

DATED : JUNE 08, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The present application is the 3rd bail application on behalf of the applicant. The applicant along with co-accused persons is alleged to have assaulted the victim brutally, leading to his death and consequent registration of FIR dated 08/02/2018, against the applicant and co-accused persons for offences under Sections 302, 323, 143, 147, 148, 149 of the Indian Penal Code.

3. By order dated 17/06/2019 in Criminal Application (BA) No.214/2019, the first bail application filed before this Court was dismissed

primarily on the ground that the eye witnesses had stated in their statements recorded under Section 161 of the Code of Criminal Procedure that the victim was assaulted brutally by the applicant herein by means of a *Gupti*. The victim had suffered 13 injuries to his body.

4. Thereafter, the second bail application bearing Criminal Application (BA) No.30/2021, was moved on behalf of the present applicant on the ground that there is change in circumstance i.e. copies of the statements recorded under Section 164 of the Code of Criminal Procedure of the witnesses were now available with the applicant and that such statements did not implicate the applicant for the said offence in the manner in which he was sought to be implicated in the statements recorded under Section 161 of the Code of Criminal Procedure. But, the said application was disposed of as withdrawn on 27/01/2021 with liberty reserved for the applicant to move a fresh bail application before the Sessions court. Thereafter, the applicant did move a fresh application for grant of bail, which was dismissed on 07/04/2021 by the Sessions Court on the ground that there was no significant change in circumstances.

5. Mr. Navlani, learned counsel appearing for the applicant submitted that a perusal of the statements of the witnesses recorded under Section

164 of the Code of Criminal Procedure demonstrate that the role attributed to the applicant by the said witnesses was completely different from what was attributed to him in statements made under Section 161 of the Code of Criminal Procedure. It was submitted that in the said statements recorded before the Magistrate under Section 164 of the Code of Criminal Procedure, the applicant was alleged to have either held the victim when the assault was carried out by the other co-accused persons or that he had assaulted by fist and kicks. It was submitted that in view of the said significant variance in the statement, it was clear that the applicant was entitled to grant of bail, particularly, when he has been behind bars for more than three years and other two co-accused persons have been already granted bail by this Court on the ground that they had allegedly assaulted the victim only by way of fist and kicks. By placing reliance on the statements recorded under Sections 161 and 164 of the Code of Criminal Procedure, the learned counsel appearing for the applicant submitted that even in the case of the said two co-accused persons granted bail by this Court, there was obvious variance in the roles attributed to them. The learned counsel for the applicant further submitted that the applicant had no criminal antecedents and that such a clear statement was made in paragraph 17 of the bail application.

6. On the other hand, Mr. I.J. Damle, learned A.P.P. submitted that considering the statements on record, given by the witnesses, presence of the applicant was certainly established at the time and place of the incident. It was submitted that the applicant along with co-accused persons was alleged to have committed a very serious offence and that the victim had suffered as many as 13 injuries, thereby indicating that the prayer for grant of bail ought not to be granted. In the reply filed on behalf of the non-applicant / State, there is no reference to criminal antecedents of the applicant.

7. Having heard the learned counsel for rival parties and upon perusal of material on record, it becomes clear that the circumstances in so far as the applicant is concerned have certainly changed as compared to the material brought to the notice of this Court when the order dated 17/06/2019 was passed, while dismissing the first bail application bearing Criminal Application (BA) No. 214/2019. By order dated 27/01/2021, this Court specifically granted liberty to the applicant in Criminal Application (BA) No. 30/2021, to approach the Sessions Court to press the prayer for grant of bail in view of change in circumstance of availability of statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure. Therefore, to that extent the

Sessions Court was not justified in its order dated 17/06/2021, in holding that there was no significant change in circumstance for considering the prayer for bail moved on behalf of the applicant. The Sessions Court also observed that there appeared to be some variance in the statements, which did not necessarily inure to the benefit of the applicant.

8. In this backdrop, a perusal of the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, when compared with the statements of the same witnesses recorded before the Magistrate under Section 164 of the Code of Criminal Procedure, would show that there is significant variance in the role attributed to the applicant. While in the statements recorded under Section 161 of the Code of Criminal Procedure, the witnesses stated that it was the applicant, who assaulted the victim by means of *Gupti*, the very same witnesses in their statements recorded under Section 164 of the Code of Criminal Procedure before Magistrate stated that the applicant either merely held the victim at the time of the incident or that he assaulted by way of fist and kicks. There is a significant difference in the role attributed to the applicant in the two statements given by the very same witnesses.

9. It is also significant that the applications filed by two co-accused persons i.e. Criminal

Application (BA) No. 1024/2018 and Criminal Application (BA) No. 1091/2018 were allowed by this Court on 11/12/2018 and 22/12/2018 respectively. It was observed in the said orders that one of the co-accused persons was alleged to have only assaulted by way of fist and kicks and that in the case of other co-accused person, the assault by way of *Gupti* could not be said to be reliable. It is an admitted position that the weapon of assault i.e. *Gupti* was not recovered at the behest of the applicant before this Court. These are significant circumstances brought to the notice of this Court and, therefore, it appears that the applicant has made out a case for grant of bail.

10. It is also relevant that there are no criminal antecedents attributable to the applicant before this Court and it is an admitted position that the applicant is behind bars for more than three years till date.

11. In view of the above, the application is allowed in the following terms :

(a) The applicant shall be released on bail in connection with FIR No.102/2018 registered with Police Station Wani District Yavatmal under Sections 302, 323, 143, 147, 148, 149 of the Indian Penal Code on furnishing PR bond of Rs.50,000/- (Rs. Fifty Thousand) and surety in the like amount.

(b) The applicant shall attend the proceeding before the Trial Court on each and every date.

(c) The applicant shall not either himself or through any person tamper with the evidence or influence the prosecution witnesses.

(d) The applicant shall not leave the jurisdiction of the Trial Court, without prior permission.

12. Needless to state, violation of any of the aforesaid conditions would make the applicant liable for cancellation of grant of bail.

13. It is also clarified that observations made in the present order are limited to the question of grant of bail to the applicant and the Trial Court shall not be influenced by this order in any manner.

JUDGE