

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

Criminal Application (BA) No. 509 of 2021

Deepak S/o Rammoha Yadav Vs. The State of Maharashtra Through Police
Station Officer, Police Station Lohara, Yavatmal

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

Court's or Judge's orders

Mr. A.S. Manohar, Advocate for the applicant
Mr. A.R. Chutake, APP for the respondent

CORAM : MANISH PITALE, J.

DATED : AUGUST 18, 2021

By this application, the applicant is seeking bail in respect of offence registered as per FIR No. 108/2020, dated 26/08/2020, in Police Station Lohara, Yavatmal District Yavatmal, for offences under Sections 302, 307, 143, 147, 148, 149, 120-B of the Indian Penal Code and Sections 4 and 25 of the Arms Act, as also Section 135 of the Maharashtra Police Act, 1951.

2. As per the oral report dated 26/08/2020, submitted by the informant, the applicant along with three named accused persons had violently assaulted the victim, resulting in his death. The incident is said to have been taken place in the afternoon of 26/08/2020, when the victim and the informant were riding on a motorcycle. It is alleged that a car

came from behind and gave dash, as a result of which, both of them fell down. It is then alleged that the accused persons alighted from the vehicle and assaulted the victim. It is stated in the report leading to registration of the FIR that the victim was assaulted on his abdomen, neck and hands by means of knives. The applicant was arrested on 27/08/2020. Upon completion of investigation, chargesheet was filed in the present case on 19/11/2020. The applicant has been behind bars since 27/08/2020.

3. The learned counsel appearing for the applicant invited attention of this Court to statements made by certain witnesses, contending that there were contradictions therein. Much emphasis was placed on the statement of the informant recorded on 27/08/2020, to contend that no overt act as such was attributed to the applicant. Use of weapon was not specified and the statement indicated that the applicant had stated to the other accused persons, who were assaulting the victim that since the victim appeared to be dead, the co-accused should stop the violent attack. The learned counsel for the applicant also invited attention of this Court to certain documents pertaining to CCTV footage placed on record with the chargesheet, contending that the time period depicted in the CCTV footage belied the occurrence of the incident, as claimed by the

informant. On this basis, it was submitted that the present application deserved to be allowed.

4. On the other hand, the learned APP submitted that the presence of the applicant was very much established, not just by the report leading to registration of FIR, but, specific statements given by the informant and other witnesses, including the widow of the deceased person. It is submitted that since common intention is invoked in the present case, the present application did not deserve favourable consideration.

5. The material on record does indicate that in the present case the victim suffered a violent attack at the hands of the accused persons. The material indicates that the victim died on the spot, as a result of the violent attack allegedly launched by the accused persons in broad day light.

6. Nonetheless, the report leading to registration of FIR mentions the presence of the applicant and generally states that the accused persons assaulted the victim by means of knife on vital parts of his body. The statement of the informant on the next day of incident i.e. on 27/08/2021, shows that although the presence of the applicant at the spot of incident is reiterated, there is no specific violent act or use of weapon attributed to

the applicant. In the context of the applicant, it is stated that when the co-accused persons had violently assaulted the victim, the applicant allegedly went near the victim and stated that the assault may be stopped since the victim appeared to be dead. Such material on record, *prima facie*, does indicate the presence of the applicant at the spot of incident, but, the role attributed to him appears to be distinct from the role alleged against the co-accused persons, who had allegedly used dangerous weapons to assault the victim. The weapons of assault have been recovered at the behest of the co-accused persons.

7. The applicant has been in custody since 27/08/2020, i.e. about a year. The investigation is complete and chargesheet is already filed. Therefore, this Court is of the opinion that the instant application can be allowed by imposing appropriate conditions.

8. 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. 108/2020, dated 26/08/2020, registered at Police Station Lohara, Yavatmal District Yavatmal, on furnishing PR bond of Rs.1,00,000/- (Rs. One Lakh) and solvent surety of like amount.
- b) The applicant himself or through any other person

shall not influence the witnesses or seek to tamper with the evidence in any manner.

- c) The applicant shall attend each and every date of the proceedings before the Trial Court.

9. Needless to say, violation of any of the aforesaid conditions would make the applicant liable for cancellation of bail.

JUDGE

MP Deshpande