

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

Criminal Application (BA) No. 534 of 2021

[Pintu @ Ashish s/o Sopan Chaudhari ..vs.. The State of Maharashtra through P.S.O., P.S.
Washim (City), Tah. and Dist. Washim]

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

Court's or Judge's orders

Mr. A. P. Tathod, Advocate for the applicant
Mr. N. S. Rao, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 07-07-2021

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant is facing prosecution under Sections 302, 307, 504 and 506 read with Section 34 of the Indian Penal Code vide Crime No. 992/2020 registered with Police Station, Washim City.

3. The case of the prosecution appears to be that the deceased used to earn livelihood as a vegetable vendor and labour. On the fateful day i.e. on 6-12-2020 at 7.00 a.m., the deceased was in the field of Narayan Nagare.

4. According to the prosecution, there was an altercation and the deceased assaulted by Narayan Nagare and the applicant Pintu @ Ashish Choudhary and others. The injured Santosh Mule was admitted in hospital in critical condition and ultimately expired on 13-12-2020.

5. Learned counsel for the applicant, Mr. Tathod would submit that there is no credible material implicating the applicant inasmuch as the sole eye witness, who in any event, appears to be a got up witness, does not attribute any specific role in the alleged assault. Mr. Tathod states that the assault with iron pipe is attributed to the co-accused Santosh Narayan Nagare.

6. Mr. Tathod then points out that although the alleged incident occurred on 6-12-2020, the report was lodged by mother of the deceased only on 10-12-2020, with the result, that the possibility of embellishment *qua* the identity of the assailants, the manner in which the incident occurred etc. cannot be ruled out. In any event,

the submission is that the applicant has no adverse criminal record and would be available for trial.

7. Learned Additional Public Prosecutor Mr. Rao strongly opposed the application seeking bail.

8. Learned Sessions Judge has rejected the bail with a cryptic observation that the applicant has assaulted the deceased and considering the seriousness and gravity of offence, he is not entitled to bail.

9. In my considered view, the gravity of the offence or the fact that the conviction may entail in harsh punishment cannot be the sole consideration or parameter while considering an application under Section 439 of the Code of Criminal Procedure. The gravity of the offence and the nature of evidence are but two of the several relevant considerations.

10. Insofar as the nature of the evidence is concerned, I have already referred to the version of the sole eye witness. No further observation is necessary since the appreciation of the material would ultimately

be for the trial court to undertake at an appropriate stage. However, there does not appear to be any material to suggest that the applicant would be in a position to influence the witnesses or that he would not be available to face the trial which are extremely important consideration while considering the entitlement to bail. On a holistic consideration, I find that the applicant has made out a case for grant of bail.

11. The applicant be released from custody subject to furnishing PR bond of ₹ 15,000/- (Rupees Fifteen Thousand) with solvent surety of like amount on following conditions.

- (a) The applicant shall not influence the witnesses directly or indirectly.
- (b) The applicant shall not leave the country without the previous permission of the jurisdictional Court.
- (c) The applicant shall not indulge in any criminal activity while on bail.

12. The application is allowed in the aforestated terms.

JUDGE

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