

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

CRIMINAL APPLICATION (BA) NO. 648 OF 2021

(Anil Bhanudas Gaikwad ..vs.. State of Maharashtra, through PSO, PS Bela District Nagpur)

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

Court's or Judge's orders

Mr. D.V. Chauhan, Counsel for the applicant,
Mr. N. Rao, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 14-07-2021

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

2. The applicant is seeking bail in connection with Crime 69/2020 registered with Bela Police Station, District Nagpur punishable under Sections 307, 302, 120-B read with Section 34 of the Indian Penal Code, Section 3/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

3. The crime is registered on the basis of report dated 26-2-2020 lodged by Mr. Vaibhav Popatrao Daware, who is the son of the deceased.

4. The gist of the report is that co-accused Amol Bonde and his associates entered into criminal conspiracy to kill Popotrao who had lent a sizable amount to Amol Bonde. The motive which is alleged, is

the disinclination of co-accused Amol Bonde to refund/return the amount lent by Popatrao.

5. According to Mr. Vaibhav, his father Popatrao was found in an injured condition on the road behind the Purti Sugar Factory. Popatrao had gun fire and blunt weapon injuries.

6. During the course of investigation, in addition to Amol Bonde who is named in the report, the applicant herein and one Vaibhav @ Goldi Kamladas Narnavare came to be arrested. Both the co-accused namely Amol Bonde and Vaibhav @ Goldi Kamladas Narnaware are released on bail by this Court.

7. Even according to the prosecution, there is no direct evidence and the prosecution case rests on circumstantial evidence. The incriminating material pressed in service by the prosecution to oppose the bail, and which incriminating material did persuade the learned Sessions Judge-8, Nagpur to reject the bail, is an alleged discovery under Section 27 of the Indian Evidence Act of clothes stained with the blood of the deceased.

8. It is not disputed by the prosecution that the clothes which are discovered at the behest of the applicant are not the clothes of the applicant but the

clothes of the co-accused Amol Bonde who is released on bail by this Court. The learned Additional Public Prosecutor Mr. N. Rao fairly states that other than the discovery of the clothes of the co-accused Amol Bonde there is no other incriminating material against the applicant.

9. Mr. D.V. Chauhan would submit, and I am inclined to agree, that the discovery of the clothes of the co-accused would be an extremely weak piece of evidence and if at all, may be incriminating material to bring home a charge under Section 201 of the Indian Penal Code or at the most a charge of abetment etc. As a stand alone incriminating material, the discovery of blood stained clothes and that too of co-accused Amol Bonde would not be sufficient to deny bail, particularly since the other co-accused including the co-accused whose blood stained clothes are discovered at the behest of the applicant are released on bail.

10. The application is allowed.

11. The applicant shall be released on bail on executing person bond of Rs.30,000/- with a solvent surety of like amount.

12. The applicant shall not enter the vicinity of the area where the witnesses reside.

13. The applicant shall not leave their local jurisdiction without prior intimation to the concerned police station.

14. The applicant shall not give threat to the witnesses or tamper with the evidence.

15. The applicant shall attend the concerned police station once in a month i.e. on every first Thursday of the month between 12-00 noon and 2.00 p.m.

JUDGE

adgokar