

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

CRIMINAL APPLICATION (BA) NO. 809 OF 2021

(Faraz Ahmed Khan Wajid Khan ..vs.. State of Maharashtra, through PSO, PS Washim City, Washim)

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

Court's or Judge's orders

Mr. M.N. Ali, Counsel for the applicant,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 09-09-2021

The applicant has made several attempts in the past to secure bail in connection with Crime 392/2019 registered with Washim City Police Station, Washim for offences punishable under Sections 302, 307, 326 and 504 read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. The first attempt before this Court was vide Criminal Application (BA) 1127/2019 which came to be dismissed by Shri V.M. Deshpande, J. vide order dated 16-12-2019.

3. The order of rejection dated 16-12-2019 is an elaborate order, which notes that the version of the witnesses is consistent, and that the applicant-Faraz assaulted the deceased with rod and co-accused-Sameer assaulted the deceased with stone.

4. The learned Judge observes thus in the order

dated 16-12-2019 :

“5. Postmortem report shows that cause of death is head injury due to hemorrhage shock. Column No.17 shows that there were post antemortem injuries and fracture to nasal bone. Eyewitnesses Abdul Areef and Yasmin Bano also attributed role of assault by the applicant by means of iron rod. Query report is also part and parcel of charge-sheet. Medical Officer has also given his opinion that weapon i.e. iron rod, seized on memorandum statement of co-accused, when it was referred to the said Medical Officer he opined that the said weapon can cause injuries as noticed in postmortem report. In view of statements of eyewitnesses and also fact that one of weapons is also seized at applicant's behest, in my view, this is not a case for praying bail since due to brutal assault made by the applicant one person lost his life.”

5. The applicant preferred Application seeking Special Leave to Appeal, which was dismissed as withdrawn.

6. The applicant then made another attempt vide Criminal Application (BA) 1080/2020 seeking bail in view of the Covid-19 pandemic. This attempt, too, failed.

7. This Court granted bail to co-accused-Sameer vide order dated 12-7-2021 in Criminal Application (BA) 319/2019. The said order inadvertently refers to non submission of the charge-sheet. The reference ought to have been to non framing of charge within six months,

since while dismissing the earlier application, this Court granted liberty to co-accused-Sameer to apply afresh, if the charge is not framed.

8. Applicant-Faraz contends that although his earlier bail applications are rejected, and the first is rejected on merit by a well reasoned order, and that the Special Leave to Appeal preferred before the Hon'ble Supreme Court is withdrawn, the fact that this Court granted bail to co-accused-Sameer, is a change in circumstances warranting a re-look at the applicant's entitlement to bail. It is further submitted that principle of parity is applicable since the applicant-Faraz is similarly situated to co-accused-Sameer who is granted bail.

9. It would not be necessary to consider the submission that grant of bail to co-accused, *ipso facto* justifies successive bail application, since I satisfied that there is absolutely no reason to revisit the applicant's entitlement to bail.

10. I granted bail to co-accused-Sameer, in view of the role which the prosecution attributed, to wit, assault with stone. The applicant allegedly assaulted the deceased with iron pipe. The previously preferred application is rejected by Shri V.M. Deshpande, J. by an elaborate and well reasoned order and the Special Leave to Appeal is withdrawn. The role attributed to co-

accused-Sameer and the present applicant is materially different, as regards the assault. I see no reason to consider the grant of bail to co-accused-Sameer as a change in circumstance as would entitle the applicant to prefer successive application.

11. The application is dismissed.

JUDGE

adgokar