

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

CRIMINAL APPLICATION (BA) NO. 810 OF 2021

(Santosh s/o Narayan Nagare ..vs.. State of Maharashtra, through PSO, PS Washim (City), District Washim)

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

Court's or Judge's orders

Mr. R.M. Daga, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 07-09-2021

The applicant is seeking bail in connection with Crime 992/2020 registered with Police Station Washim (City), District Washim for offences punishable under Sections 302, 504 and 506 read with Section 34 of the Indian Penal Code.

2. The prosecution case is that deceased Santosh Mule was brutally assaulted by the applicant-Santosh Nagare and the co-accused on 06-12-2020, and he succumbed to the injuries suffered, on 13-12-2020.

3. The report, on the basis of which the crime is registered, is lodged by the mother of the deceased on 10-12-2020. Her version is that her son Santosh Mule had gone to the agricultural field of the applicant at 7-00 a.m. on 06-12-2020. At 7-00 p.m., the applicant-Santosh Nagare and co-accused-Pintu Sopan Choudhary brought her son in an injured condition and dumped him in the

house. She requested Santosh Nagare and Pintu Choudhary to shift her injured son on the first floor. However, the applicant and the co-accused responded that they are not her servants and left. The informant took her son to the Critical Care Centre, Washim. The police arrived at the hospital, however, since the injured was unconscious, the police returned without recording his statement. It is then stated in the report that in the night hours, the medical condition of the injured deteriorated and he was referred to Akola Government Hospital. The injured was taken in an ambulance to the Government Hospital, Akola and during the journey, the injured informed her that the applicant-Santosh Nagare Pintu Sopan Choudhary, Balu and Narayan Nagare assaulted him. She states that her injured son specifically disclosed that the applicant-Santosh Nagare assaulted him with iron rod on the head. The injured further disclosed that he was threatened and then thrown in the drain.

4. Ordinarily, this Court ought to avoid considering the material on record too minutely. However, since the learned Counsel Mr. R.M. Daga has called upon the Court to consider and adjudicate, albeit *prima facie*, several submissions canvassed in support of the bail application, some elaboration is inevitable.

5. The evidence on record is overwhelming. The

assault is brutal. The post-mortem report shows that as many as eighteen external injuries were found on the body. Additionally, the other injuries which are discovered by the external examination as fractures, are 1) closed fracture of lower 1/3rd part of right ulna with swelling around right wrist joint, 2) closed fracture middle 1/3rd part of left humerus, and 3) closed fracture lower 1/3rd part of right tibia-fibula.

6. The injury suffered on the head, and which injury is inflicted by the applicant, as is apparent from a *prima facie* consideration of the material on record, is lacerated wound over right temporal-parietal region, edges irregular, muscle deep.

7. Mr. R.M. Daga would submit that the post-mortem report does not disclose the specific injury which caused death. The submission is irrelevant. The opinion of the doctor, who conducted the autopsy, is that the injuries mentioned in Columns-17 and 18 are collectively sufficient in the ordinary course of nature to cause death.

8. The next submission of the learned Counsel Mr. M.R. Daga is that while the oral declaration allegedly made reference to assault on the head, the statement of the eyewitness does not specifically mention an assault on the head. The witness, who is projected as eyewitness, states that after the initial assault, when the

deceased fell down, the applicant assaulted him with iron rod. It is absolutely irrelevant that the statement of eyewitness does not refer to assault on the head. It is not expected of a witness before whom a brutal assault unfolded, and particularly an assault in which numerous blows are inflicted on a fallen man, to specifically state that amongst the many blows, a blow was also inflicted on the head.

9. The next submission of the learned Counsel Mr. M.R. Daga is that the statement of the eyewitness is belatedly recorded on 11-12-2020. In my considered view, there is absolutely no delay in recording the statement of the eyewitness considering that the wheels of investigation were set in motion only on 10-12-2020. In any event, *arguendo* if it is assumed that there is some delay, it would be for the trial Court to consider the probative value of the evidence after ascertaining the circumstances and justification, if any, for the delay.

10. Mr. R.M. Daga then submits that the statement of the injured was not recorded by the police although the report was lodged on 10-12-2020. In the absence of any material in the charge-sheet to suggest that the injured was in a position to give a statement, the submission would have to be left to the trial Court to consider on the basis of the evidence brought on record.

11. Mr. R.M. Daga would submit that offence

punishable under Section 302 of the Indian Penal Code is not made out. The submission is on the premise that the assault was not premeditated and appears to be in the heat of the moment. The submission is absolutely untenable. Considering the brutality of the assault and the injuries suffered, it cannot be said that offence punishable under Section 302 of the Indian Penal Code is not made out.

12. Mr. R.M. Daga then submits that according to the oral dying declaration, other than the head injury, the other injuries are attributed to the co-accused, which are on non vital parts. Mr. R.M. Daga would submit that other than the head injury, it cannot be said that the applicant inflicted any other injury. It is difficult to appreciate such a submission. The applicant launched an assault with iron rod. The injuries disclosed in the post-mortem report, including the injuries other than the head injury, are not inconsistent with an assault with iron rod. In any event, the case of the prosecution is that all the co-accused launched the assault with the common intention of killing Santosh Mule. Section 34 of the Indian Penal Code is invoked. Considering the prosecution case, a microscopic dissection of the blows inflicted and the effect of the individual blow and weapons, is not necessary.

13. The next submission is that three iron rods and

one wooden rod are recovered, and two are recovered pursuant to memorandum under Section 27 of the Indian Evidence Act from the applicant and co-accused Pintu Choudhary. Mr. R.M. Daga states that the query report is that all the four weapons are capable of causing the injuries seen on the body. It was difficult to comprehend what exactly was the submission. However, after some effort, what this Court could gather, is that according to Mr. R.M. Daga, the other accused could have also inflicted the blows. The submission need not detain this Court. As noted supra, the role of the applicant is clearly spelt out not only by the eyewitness, but is also spelt out in the oral dying declaration recorded.

14. Having exhausted with every submission, finally Mr. R.M. Daga seeks refuge in the doctrine of parity. The co-accused-Pintu Choudhary is granted bail by this Court considering the role attributed to him by the eyewitness which is an assault without deadly weapon. In any event, as I have observed in Criminal Application (BA) 422/2020 (Mangesh s/o Ranjit Jagtap vs. State, through PSO, PS Lakadganj, Nagpur) decided on 16-10-2020, the doctrine of parity is not an inexorable rule. Apart from the fact that in the present case, the applicant appears to have played the most prominent role in the brutal assault, and the material on record is *prima facie* overwhelming, I am not inclined to invoke

the doctrine of parity.

15. The application is dismissed.

16. Every observation made is for the limited purpose of deciding the entitlement to bail and shall not prejudice the accused in the trial Court.

17. The trial Court is requested to expedite the trial and to frame the charge within the next thirty days, if not already framed, and then to conclude the trial as expeditiously as possible, and in any event, within the next twelve months.

JUDGE

adgokar