

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

CRIMINAL APPLICATION (BA) NO.1072 OF 2021

(Sumit s/o Mohan Dere Vs. State of Maharashtra thr. PSO PS Shantinagar, Nagpur)

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

Court's or Judge's orders.

Mr. R. K. Tiwari, Advocate for Applicant.
Mr. N. S. Rao, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 27th OCTOBER, 2021.

The applicant – Sumit Dere is arraigned as accused 4 in Crime 35/2021, registered with Police Station Shantinagar, Nagpur, for offences punishable under Sections 143, 147, 148, 149, 302 and 323 of the Indian Penal Code and Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. In the incident which allegedly occurred on 07.02.2021, Mr. Vijay Waghdhare was done to death, and Mr. Yash Palandurkar suffered injuries.

3. The prosecution is treating the report lodged by Mr. Yash Palandurkar as the first information report. Mr. R. K. Tiwari joins issues and submits that the information disclosed by Mr. Yash Palandurkar to the Police Constable on duty at the hospital where he sought treatment disclosed the commission of cognizable offence, and therefore, is the FIR.

4. At this stage, it would not be necessary to consider whether the statement of Mr. Yash Palandurkar is the FIR or is only a statement under Section 161 of the Criminal Procedure Code.

5. Be that as it may, since Mr. Yash Palandurkar is the injured, and his version has come on record in close proximity to the incident, the version merits deeper consideration as compared with the statements of which are recorded more than two months after the incident.

6. The role attributed to the applicant is that he assaulted Vijay with cement *gattu* (paver block). Co-accused Yash Harode and Dhiraj Admane who assaulted Vijay with stone tiles are released on bail.

7. Be that as it may, while ordinarily I would be loath to make any observation on the probative value of the statement, in the present case, there are strong reasons for me to make a departure. The Investigating Officer has found that Mrs. Sangita Dere, Mrs. Aniket Dere and Mr. Akash (who allegedly fetched the knife at the instigation of Mrs. Sangit Dere) were not even in Nagpur at the relevant time, and therefore, the Investigating Officer did not arraign them as accused in the charge-sheet filed.

8. Mr. N. S. Rao, the learned Additional Public Prosecutor would submit that since over implication is quite

common, the worth of the statement must be left to the trial Court to consider. While I agree with Mr. N. S. Rao that the probative value of the statement and the evidence which may be adduced by Mr. Yash Palandurkar will have to be left to the trial Court, for the purpose of bail, the fact that the very substratum of the version is found false by the Investigating Officer, impels me to hold that a case for bail is made out.

9. The applicant has no adverse antecedents.

10. Co-accused Yash Harode and Dhiraj Admane, who according to the informant played an identical role, are granted bail.

11. The learned APP Mr. Rao has invited my attention to a chart which shows that the applicant has faced as many as five prosecutions. One of them is for rash and negligent driving, one is utterance of obscene words, one is under the Prohibition Act, one is under the Gambling Act and there is only one offence under the Arms Act simplicitor without any bodily offence involved. Considering the nature of the material, I am not inclined to reject the bail only on the ground of the adverse antecedents.

12. A case for bail is made out.

13. The application is allowed.
14. The applicant be released from custody, subject to the following conditions:
- (i) The applicant shall execute the personal bond of Rs.15000/- (Rupees Fifteen Thousand only) with solvent surety of like amount.
 - (ii) The applicant while on bail, shall not indulge in any criminal activity and if found involved in any offence, the prosecution shall be entitled to seek cancellation of bail on that ground alone.
 - (iii) The applicant shall not enter the territorial jurisdiction of the Shantinagar Police Station, Nagpur till the conclusion of the trial. Any breach of this condition shall *ipso facto* entail the prosecution to seek cancellation of bail.
 - (iv) The applicant shall attend every date of hearing scrupulously.
 - (v) The applicant shall not make any attempt to influence the witnesses, directly or indirectly.
 - (vi) The applicant shall not leave the country without the permission of the jurisdictional Court.

JUDGE