

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION (BA) NO. 1308/2020
WITH
CRI.APPP. : 1449/2020
(Pandhari Rambhau Wayal vs. The State of Maharashtra)

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

Court's or Judge's order

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Mr. A. Mardikar, Sr.Adv. with Mr.R. M. Daga, Advocate for the applicant
Mr. Amit Chutke, APP for respondent-State

CORAM : MRS.SWAPNA JOSHI, J.

DATED : 27th January, 2021

The applicant has filed the present Application u/s 439 of the Code of Criminal Procedure, seeking bail for offence punishable under section 302 read with Section 34 of the Indian Penal Code registered at Police Station Andhera, Dist. Buldana, in respect of Crime No.222/2020.

The incident had occurred on 3rd July 2020. There was a dispute between the applicant and the complainant over the boundary of agricultural field. It is further case of the prosecution that earlier the accused persons abused the wife and mother of the informant. However the said dispute was settled on the same day. However thereafter, at about 11.30 pm, while the deceased was sleeping outside his house and informant, his mother and wife were sleeping inside the house, the informant woke up by hearing the shouts of deceased and saw that the applicant was holding an axe in his hands and the juvenile in conflict with law

Rishikesh, was holding an iron rod. They both were assaulting the deceased. The mother of the informant requested them not to beat her husband but in vain. They assaulted the deceased and fled away from the spot. The informant had seen the accused in the light of inverter battery.

I have heard learned counsel for the respective parties. Perused the case-papers.

Mr. Mardikar, the learned senior Advocate vehemently argued that although it is contention of the informant that he had seen the incident in the battery light, it was the solar light which was affixed inside the house and, therefore, there was no question of seeing the incident in the battery light. It is further contended that statement of the wife of the deceased indicates that the incident was noticed in the light of a torch. It is submitted that the variance in the statements of the witnesses creates a serious doubt, whether they had witnessed the incident which had occurred outside the house during night time, more particularly when the witnesses were sleeping inside the house. My attention was further invited to the aspect that the Column No.17 of P.M. report indicates that there was a lacerated wound on the parietal region of the deceased which was caused due to sharp and blunt object. It is submitted that since the allegations are that the applicant was holding an axe, then the said injury would not correspond to the allegations in the FIR.

Learned APP vehemently opposed the said Application and

contended that there are eye witnesses to the incident; so also there is recovery of the weapon at the instance of the present applicant and thus there is sufficient *prima facie* evidence against the applicant.

After hearing both the sides and on a perusal of the reply so also the charge-sheet, in my considered opinion, *prima facie* case is made out by the applicant for grant of bail. Moreover in the instant matter, the investigation is almost completed and the charge-sheet is filed by the Investigating agency. The applicant was arrested on 4th July 2020. There are no criminal antecedents to his discredit. As such, I am of the opinion that the applicant can be released on bail by imposing certain conditions. Hence the order :-

ORDER:

The applicant- Pandhari Rambhau Wayal, be released on bail for offence punishable under section 302 read with Section 34 of the Indian Penal Code, registered at Police Station Andhera Dist. Buldana, in respect of Crime No.222/2020 on his executing a PR bond in the sum of Rs. 30,000/- (rupees thirty thousand) with one or two solvent sureties in the like amount, on the following conditions :-

- (i) He shall attend the concerned Police Station once in a month i.e. every 1st Saturday of the month, between 11.00 and 2.00 pm, till the trial commences.
- (ii) He shall provide his residential address and cellphone number to the concerned Investigating Officer and shall not change the same without prior intimation to the Investigating

Officer and shall cooperate with them.

(iii) He shall not tamper with the prosecution witnesses in any manner.

(iv) He shall not indulge in similar type of offence in future. If it is noticed that if he is involved in such type of offence, the prosecution will be at liberty to move for cancellation of bail.

(v) He shall not change the place of residence without prior intimation to the concerned Police Station.

(vi) He shall attend the dates of hearing regularly in the trial Court.

(vii) Two consecutive absence without reasonable cause, will entail the prosecution to move for cancellation of bail.

(viii) Any observations made in this order are only for granting bail to the applicant and it shall not come in the way of the trial Court, during trial.

Criminal Application stands disposed of.

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In view of disposal of main Application, this Application does not survive. The same is disposed of.

JUDGE

sahare