

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

Criminal Application (BA) No. 1091 of 2021

(Ritik S/o Prabhu Hirwani ..vs.. The State of Maharashtra, through P.S.O., P.S. Kalamana,
Dist. Nagpur)

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

Court's or Judge's orders

Mr. C. R. Thakur, Advocate for the applicant
Mr. N. R. Rode, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 18-11-2021

The applicant is seeking bail in Crime 533/2020 registered with Kalamana Police Station, District Nagpur for the offences punishable under Sections 302, 143, 144, 147, 148, 149 and 504 of the Indian Penal Code (IPC), Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. The applicant earlier preferred Criminal Application (BA) 4/2021 which was heard by this Court (Coram : Mrs. Swapna Joshi, J.) on 19-1-2021. While the learned Judge was not inclined to grant bail, the applicant was granted liberty to approach the learned Sessions Judge for bail, if the trial did not commence within seven months. The applicant availed the liberty

and approached the learned Sessions Judge, who rejected the bail.

3. The primary submission before the learned Sessions Judge which did not find favour with the Judge, was that, the only role attributed to the applicant was assault with fists. The learned Judge reasoned that since the prosecution has invoked Sections 149 and 34 of the IPC, the fact that the applicant assaulted only with fists may not be significant.

4. The learned Judge is absolutely right on principle. However, considering that the assailants, who according to the prosecution included the applicant, were at Bharatwada and when one of them, Lokesh, with whom the deceased had previous enmity called out, the deceased disembarked from the motorcycle and approached Lokesh with a sword, there is room enough to argue that the assembly did not share either common object or common intention at that particular point of time to cause death. While it is true that common intention may develop on the spur of moment and the meeting of mind may not have any particular timeline, all

these aspects will have to be addressed on the basis of evidence by the learned trial Judge. It does not appear to be any dispute that one of the accused Lokesh also suffered a sword injury and a counter report is registered under Section 307 of the IPC.

5. Considering the role attributed to the applicant and particularly the fact that he has no criminal antecedent, I am inclined to grant bail.

6. The application is allowed.

7. The applicant be released on bail on furnishing PR bond of ₹ 16,000/- (Rupees Sixteen Thousand) with solvent surety of like amount.

8. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

9. The applicant shall not leave the country without the permission of the jurisdictional Court.