

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

CRIMINAL APPLICATION [BA] NO. 1268/2020.

Sheikh Nishar Sheikh Saadik

-VERSUS-

State of Maharashtra

CRIMINAL APPLICATION [BA] NO. 8/2021.

Kamal @ Chattu Uikey s/o Ashok Uikey

-VERSUS-

State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri H.P. Lingayat, Advocate for the Applicant in
B.A.No.1268/2020.

Shri Shaikh Sabahat Ullah, Advocate for the Applicant in
B.A.No.8/2021.

A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 15, 2021.

Hearing was conducted through Video Conferencing.

2. Both the bail applications arise out of Crime No.491/2019 registered with Kalamna Police Station, Nagpur for the offence punishable under Sections 302, 307, 341, 323, 120-B, 143, 147, 148, 149 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 135 of the Bombay Police Act.

3. Rejection of bail of both the accused by the Sessions Court

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leads them to approach this Court to exercise concurrent jurisdiction of this Court in terms of Section 439 of the Code of Criminal Procedure. Amongst other grounds, applicants claimed bail on the ground of parity and by demonstrating inconsistencies in between the first information report and subsequent statement of the informant recorded in terms of Section 164 of the Code of Criminal Procedure.

4. One transgender namely Pravin @ Chamcham was murdered on 04.06.2019 around 1.45 p.m. at the residence of the co-accused namely Uttam @ Baba, also a transgender. One of the eye witness namely Rashi Khobragade [transgender], witnessed the assault leading to lodging and registration of the first information report on the same day around 7 p.m. It is the prosecution case that a group of transgenders led by co-accused Uttam @ Baba was earning livelihood by singing and dancing. The money collected used to be routinely deposited with the leader and then it was being distributed amongst the group members. On account of distribution of collected amount the deceased Pravin @ Chamcham raised some dispute which erranted group leader Uttam @ Baba.

5. The informant narrated the background facts and on the point of incident has stated that at the relevant time co-accused Uttam @ Baba, applicants and some others had assaulted the deceased by means of knife. Some of the accused dealt stick blows on the person of Pravin @ Chamcham, which resulted into death of Pravin @

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Chamcham. The incident was a fall out of monetary dispute amongst the members of the group.

6. The learned Counsel appearing for the applicant Sheikh Nishar primely pointed towards the inconsistencies in between the initial statement of the informant dated 04.06.2019, with the later statement recorded on 01.08.2019 in terms of Section 164 of the Code of Criminal Procedure. He laid stress on the later statement to contend that no role was attributed to Sk. Nishar in the said later statement.

The learned Counsel appearing for other applicant – Kamal @ Chattu would submit that besides informant there is no other eye witness to the incident. It was his submission that there was no recovery, nor disclosure at the instance of both applicants. My attention was also drawn towards the injury certificate disclosing total 4 injuries. It is also the submission that the prosecution in reply-affidavit has stated [in paragraph no.2] that the applicant Sk. Nishar was merely holding a stick at the time of incident. It is the contention that the co-accused Kiran Gawli charged with the similar allegations was released by this Court on bail vide order dated 26.10.2020, hence, applicants are entitled for same treatment.

7. The learned A.P.P. has strongly opposed both the bail applications by filing reply affidavit. It is contended that there are specific allegations of inflicting knife blows by both the

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applicants/accused, hence they do not deserve to be released on bail. Moreover, the learned A.P.P. has pointed out that blood stained clothes of the accused have been seized which indicates their complicity in the crime.

8. With the assistance of both the sides I had minutely perused the first information report, statement of witnesses and other relevant material. Pertinent to note that within few hours from the occurrence, the first information report was lodged by one of the eye witness to the incident namely Rashi. In her initial statement Rashi-informant has stated that the co-accused Uttam @ Baba, Kiran Gawali, Chattu (applicant in Criminal Application No.8/2021) and Sk. Nishar (applicant in Criminal Application No. 1268/2020) and two unknown persons assaulted Pravin @ Chamcham by means of a knife. Rashi further explained that the deceased was assaulted by means of a knife by Chattu (applicant in Criminal Application No.8/2021), co-accused Uttam @ Baba and Sk. Nishar (applicant in Criminal Application No.1268/2020). The informant further stated that the co-accused Kiran Gawali [of whom parity is claimed] and two other unknown assailants beat the deceased by means of stick.

9. Prima facie the conjoint reading of the relevant portion of the statement of the informant conveys that the allegations of inflicting knife blows are against both applicants and group leader Uttam @ Baba. In context later statement of the informant, recorded

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under Section 164 of the Code of Criminal Procedure, was also perused. True this time the informant somewhat differently stated about the occurrence. In the later statement the informant had stated that at the relevant time the group leader Uttam @ Baba, co-accused Kiran and three others including Chattu, brought weapons. Abruptly Uttam @ Baba inflicted knife blows on the person of the deceased, rest beat the deceased by means of stick. Laying stress on this inconsistency, it has been submitted that there was no reference about involvement of applicant Nishar and therefore, he is entitled for benefit of doubt.

10. It is to be remembered that the subsequent statement was recorded after two months from the date of occurrence, which has to be appreciated in the said context. The initial statement which was the first disclosure by the informant within few hours of the occurrence, specifies that both applicants inflicted knife blows to the deceased along with the group leader Uttam @ Baba, therefore, at this stage the applicants would not get any advantage on account of the inconsistencies occurred in belated statement. Of course it is open to canvass said ground at the time of trial i.e. after recording of the evidence of the informant.

11. As regards to rule of parity, this Court has released the co-accused Kiran Gawali on bail by expressing that Kiran Gawali used lathi or fists in the assault. It was expressed that no fatal injuries i.e.

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stab injuries were caused by Kiran, which led to his release. The case of both the applicants stands on different footing. Against them there are specific allegations in the first information report itself that they dealt knife blows on the person of the deceased. The role of both the applicants is clearly distinguishable from Kiran, hence, rule of parity would not apply.

12. The post mortem notes disclose that there are several injuries on the person of the deceased and most of them appear to be caused by sharp weapon. The incident erupted out of monetary dispute in between a group, and deadly weapons were freely used. In the background of serious allegations, availability of eye witnesses, gravity of offence, severity of punishment, the accused does not deserve to be enlarged on bail.

13. In view of above discussion, both Criminal Applications are rejected.

JUDGE

Rgd.