

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

Criminal Appeal No.487/2021

(Rohit Kanojiya V State of Maharashtra and another)

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

Court's or Judge's Orders

Mr. Y.Y. Humne, Adv for appellant.

Mrs. Barabde, APP for resp.no.1.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.

DATE : 21-12-2021.

Heard Mr. Humne, learned Counsel for the appellant
and Mrs. Barabde, learned APP for the State.

2. The respondent no.2 has been duly served but there is
no appearance on his behalf.

3. This appeal is directed against the order dated
21-10-2021 made by the learned Additional Sessions Judge-12,
Nagpur, rejecting the appellant's application for regular bail. The
appellant has been charged with committing offences punishable
under Sections 307, 341, 506 r/w 34 of the Indian Penal Code
(IPC) and Section 3(2)(va) of the Scheduled Castes and the
Scheduled Tribes (Prevention of Atrocities) Act, 1989(Atrocity Act).

4. The appellant is in custody since 20-12-2019. The
appellant's earlier application for bail was rejected by the learned
Sessions Judge and even the appeal against the same was disposed
of as withdrawn by granting the appellant liberty to apply for bail

before the learned Sessions Judge in case the trial does not commence within eight months.

5. This is clear from our order dated 02-12-2020 made in Criminal Appeal No.433/2020. After the expiry of 8 months and because the trial had not commenced, the appellant once again applied for bail before the learned Sessions Judge. By impugned order dated 21-10-2021, his application has been rejected. Hence, the present appeal.

6. We have heard Mr. Humne, learned Counsel for the appellant and Mrs. Barabde, learned APP for the State in this matter.

7. According to us, this appeal can be allowed and the appellant can be enlarged on bail no doubt by imposing certain conditions upon him for the reasons which we shall briefly enumerate hereinafter.

8. Admittedly, for the reasons not attributable to this appellant the trial has not commenced before the Learned Sessions Judge. In the facts of the present case this will amount to some change in the circumstance. Besides, by our order dated 02-12-2020, we had granted the appellant liberty to apply for bail if the trial does not commence within 8 months.

9. There is record which suggests that the appellant has

been tested HIV positive. Mr. Humne, learned Counsel points out that the health of the appellant is deteriorated and this is also a circumstance that should be taken into account. The record in this case also indicates that the three co-accused who were also charged along with the appellant have already been enlarged on bail. The judgment and order dated 07-09-2020 in Criminal Appeal No.245/2020 enlarging one Jigar Kanojiya on bail has also been placed on record.

10. Mrs. Barabde, learned APP points out that the appellant was the main accused and there is evidence that he is having stabbed the victim in the stomach. In this case, it is not as if we are granting the appellant bail on the ground of parity but we have referred to the circumstances of three co-accused persons being released on bail as only one of the circumstances that persuade us to release the appellant as well on bail.

11. The record also indicates that the appellant was 21 years old at the time of commission of crime and Mr. Humne, learned Counsel points out that his mother works as a domestic helper. The appellant is in custody for almost 2 years now and according to us a case is made out for his enlargement on bail at this stage. The apprehension expressed by learned APP about the appellant trying to pressurize the witnesses or tamper with the

evidence can be addressed by imposing appropriate conditions upon the appellant.

12. Upon cumulative consideration of all the aforestated circumstances, we allow this appeal by making the following order.

ORDER

- i) The impugned order dated 21-10-2021 made by the learned Additional Sessions Judge-12, Nagpur is hereby set aside.
- ii) Appellant-Rohit Rajesh Kanojiya arrested in connection with Crime No.753/2019 registered with Kanhan Police Station, shall be released on bail on his executing PR Bond of Rs. 25,000/- with one solvent surety in the like amount.
- iii) The appellant shall attend the Sessions trial on each date unless his presence is exempted by the learned Sessions Judge on any particular date.
- iv) The appellant is neither flee from justice nor tamper with any witness or the evidence in the pending case.
- v) Pending application(s), if any, stand(s) disposed of.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)