

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

Criminal Application (BA) No. 1231 of 2021

(Karan S/o Shankar Wankhede ..vs.. The State of Maharashtra through P.S.O., P.S. New Kamptee,
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
Mrs. K. R. Deshpande, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 3-12-2021

Heard.

2. The applicant is arraigned as accused 2 in Crime 12/2021 registered with Police Station, New Kamptee, District Nagpur for offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. The prosecution case is that the applicant and accused 1 Roshan @ Tatya assaulted deceased Kundan Rangari with sharp weapons on 9-1-2021 at 6.00 a.m. or thereabout. The incident is allegedly the fallout of a quarrel which took place the previous night on a trivial issue.

4. Mr. Thakur submits that while there is ample evidence against accused 1 Roshan @ Tatya, the material

against the present applicant is fragile in the sense that in the eye witness account of Mohammad Ramzan, the act of assault with knife is attributed to Roshan @ Taty and the only participation, if at all attributed to the applicant is that he was seen running away along with Roshan @ Taty. Mr. Thakur would emphasize that the alleged weapons of offence are seized from accused Roshan @ Taty and that there are no blood stains on the clothes which are seized from the applicant.

5. Learned Additional Public Prosecution Mrs. Deshpande points out that Kundan, before his death, disclosed to his wife in the presence of witness that he was assaulted by both the accused. Mrs. Deshpande further points out that in the year 2019, offence punishable under Section 4/25 of the Arms Act is registered against the applicant.

6. It would not be appropriate to minutely examine the material on record and to make any definite observation lest the accused who is not before the Court is prejudiced. However, considering that there does not appear to be an eye witness account which directly

identifies the applicant as one of the assailants, I am inclined to grant bail.

7. In so far as the dying declaration is concerned, at present, the material on record is not sufficient to even take a *prima facie* view. It would be for the trial Court to ascertain whether the injured, at the relevant time, was in a position to talk and whether the dying declaration can be held against the accused.

8. The apprehension of the prosecution is that the material witnesses which include the wife of the deceased, and the applicant reside in the same vicinity and considering the previous antecedent, the possibility that the applicant may pressurize or influence the witnesses, is a real possibility.

9. Mr. C. R. Thakur submits that in order to allay the apprehension of the prosecution, the applicant undertakes to reside either at Wardha or Tumsar.

10. The application is allowed subject to the following conditions.

(i) The applicant be released on bail on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with solvent surety of the like amount.

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

(iii) Till the conclusion of the trial, the applicant shall reside either at Wardha or Tumsar and shall not enter the territorial limits of Kamptee, save and except with the permission of the jurisdictional Court which may be granted only for just and exceptional reasons.

(iv) Even a singular breach of the condition that the applicant shall reside at Wardha or Tumsar shall entail cancellation of bail.

(v) Within 48 Hours of release from custody, the applicant shall intimate to the Investigating Officer the detailed address of his proposed residence during the course of the trial and the phone numbers etc. The

Investigating Officer shall be kept informed of change, if any.

(vi) The applicant shall not leave the country without the permission of the trial Court.

JUDGE

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