

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

CRIMINAL APPLICATION [BA] NO. 1232/2021.

Sandeep Puran Yadav

-VERSUS-

The State of Maharashtra through P.S. Gondia.

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

Court's or Judge's Orders

Shri A.S. Manohar, Advocate for the Applicant.
Shri H.D. Dubey, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 23, 2021.

Heard.

2. The applicant is seeking regular bail in terms of Section 439 of the Code of Criminal Procedure in connection with Crime No.292/2021 registered with the non-applicant Gondia City Police Station, for the offence punishable under Sections 294, 323, 341, 395 and 506 of the Indian Penal Code. In the aforesaid crime, the applicant came to be arrested on 10.05.2021 and on completion of investigation charge sheet has been filed.

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3. Besides usual grounds, the learned Counsel for the applicant submitted that there is no evidence against the applicant about his involvement in the crime. Secondly, bail is claimed on the ground of parity by stating that the co-accused namely Sushant @ Kanha Yadav having similar allegations, was released on bail by this Court in Criminal Application (BA) No. 1041/2021.

4. The State resisted the bail by filing reply-affidavit. Besides resistance on facts, it is contended that the applicant is a history sheeter, against whom several offences are registered. Moreover, it is contended that there are high chances of tampering of prosecution witness since the informant in his supplementary statement stated about threats.

5. At the instance of a report dated 10.05.2021, lodged by the informant, a driver of tipper the aforesaid crime came to be registered. It is the prosecution case that on 09.05.2021, the informant was transporting sand. Around 8 p.m. 8 to 9 persons accosted the tipper and asked for royalty pass. They threatened the informant and compelled him to unload the sand worth Rs.15,000/-. The informant has

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telephonically conveyed the things to the owner. One of the miscreants namely Manish Verma remained near the tipper, while remaining fled. Within short while police arrived on the spot and during enquiry with Manish Verma, he disclosed names of his associates including the applicant Sandeep and Kanha.

6. Perusal of the entire charge sheet discloses that besides mere presence, no further role is assigned to the applicant. Undeniably, during course of investigation the police conducted T.I. parade in which none of the witness has identified the applicant. The police report contains a conversation of the assailants, in which two names i.e. Dassu [applicant] and Kanha were taken by the remaining assailants. The material available against the applicant is exactly similar to that of the co-accused Kanha. This Court has granted regular bail to Kanha vide order dated 04.12.2021 by holding that there is no sufficient material against him for keeping him under confinement. The prosecution has also not disputed about applicability of the rule of parity to this applicant.

7. The resistance is mainly on the ground of attempt of tampering and criminal antecedents of

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applicant. The learned Prosecutor took me though the supplementary statement of the informant dated 25.05.2021 and 05.06.2021. In both statements the informant stated that some unknown persons came to him and threatened for not to identify the assailants in the TI parade and to withdraw the report.

8. Admittedly, at that time other accused including the applicant were behind the bar. The statement is to the effect that the threats were given on behalf of the arrested accused. In the eventuality, it cannot be presumed that particularly on behalf of the applicant threats were given. Already investigation is completed and charge sheet has been filed.

9. The prosecution has provided a chart of applicants criminal antecedents. It reveals that in all there were 6 prior offences registered against the applicant. The impugned order discloses that there were 12 prior crimes, out of which he was acquitted in 8 crimes. The trial Court observed that in most of the cases, the applicant secured acquittal since the witnesses turned hostile or benefit of doubt was given to him. The fact remained that as per chart, at present two cases are pending against the applicant

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one of them is under Section 302 of the Indian Penal Code. In the circumstances, it is a matter of consideration as to whether only on the basis of antecedents the applicant can be detained in jail.

10. The learned counsel for the applicant by placing reliance on the decision of the Hon'ble Supreme Court in case of **Maulana Mohammed Amir Rashadi .vrs. State of Uttar Pradesh and another (2012) 2 SCC 382**, urged that mere antecedents may not be a sufficient reason for detention in absence of substantial material in existing crime. It is brought to the notice, that in said case near about 3 dozen cases were registered against the accused, however, the Hon'ble Supreme Court declined to cancel the bail by observing that despite criminal antecedents it is the duty of the Court to find out the role of the accused in the case in which he has been charged.

11. True antecedents is one of the factor for consideration, however, that should be in supplement to the material which emerges against the accused. In case at hand, besides mere presence, no further role was assigned to the applicant. Neither there are allegations of overt act or violence at the hands of the

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applicant. Moreover, this Court has released the co-accused Kanha on bail having similar allegations. True there are some antecedents, but, in absence of sufficient material in existing crime his liberty cannot be curtailed only on the basis of bad antecedents. In this regard certain stringent conditions would suffice the purpose. In view of this, following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant/accused – Sandeep Puran Yadav be released on regular bail in connection with Crime No.292/2021 registered with the non-applicant Gondia City Police Station, for the offence punishable under Sections 294, 323, 341, 395 and 506 of the Indian Penal Code, on his furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (iii) The applicant/accused shall not enter with the territorial jurisdiction of Gondia District till the conclusion of trial, except for attending Court cases.
- (iv) The applicant/accused shall not involve himself in any criminal activities while on bail.
- (v) The applicant/accused shall provide his

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cell number and intended address of residence to the investigating officer within one week from his actual release.

- (vi) The applicant/accused shall not tamper with the prosecution evidence in any manner.
- (vii) Breach of either of the condition will give rise to the prosecution to move this Court for cancellation of bail.

JUDGE

Rgd.