

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

CRIMINAL APPLICATION (BA) NO. 1366/2021

Ankush @ Kaddu Baban Nandwansi ...Versus...State of Maharashtra

AND

CRIMINAL APPLICATION (BA) NO. 26/2022

Ayush @ Chhotu Prafful Dixit and others ...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

Mr. J.S.Chilotra, Advocate for the applicant in BA No. 1366/2021 and
 Mr. D.M.Dixit, Advocate for applicants in BA No. 26/2022.
 Mr. A.R.Chutke, APP for Respondent/State.
 Mr. H.A.Bihalani, Advocate for intervenor/complainant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 31/01/2022

1] Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard Mr. Chilotra, learned counsel for the applicant in Cri. Application (BA) No. 1366/2021 and Mr. Dixit, learned counsel for the applicants in Cri. Application (BA) No.26/2022, Mr. Chutke, learned APP for State and Mr. Hitesh Bihalani, learned counsel for the complainant/intervenor.

3] The applicants are arrayed for the offences under Sections 307, 147, 148, 149, 504 of the IPC in Crime No. 524/2021, which has occurred on 29.8.2021 and have been

arrested 2.9.2021. The charge-sheet has been filed on 25.11.2021. The earlier application of the applicants in Cri. Application (BA) No. 26/2022 came to be withdrawn on 25.10.2021 with liberty approach the learned Sessions Judge after the investigation was complete and charge-sheet is filed. Consequent to the filing of the charge-sheet, the Regular Bail Application filed by the applicants in Cri. Application (BA) No. 26/2022 came to be rejected by the learned Sessions Court by order dated 15.12.2021, which is how this application is before this Court.

4] Mr. Dixit, learned counsel for the applicants in Cri. Application (BA) No. 26/2022 submits that the applicant No. 1 Ayush is of a tender age of 18 years and is a student by profession and is also a sportsman playing 'Kabaddi'. He submits that the unfortunate incident was not premeditated, but had happened in the heat of the moment and the applicants who have been arrested on 2.9.2021 have been in MCR since 5.9.2021. The investigation is complete and the charge-sheet is already filed on 25.11.2021, considering which the applicants be released on bail on whatever terms deemed fit by this Court. He further submits that the applicants undertake not to enter the city of Paratwada or its outskirt, nor to visit the site of the incident till the entire trial is complete. He submits that some sympathetic consideration be accorded to the applicants who are students and young in

age.

5] Mr. Chilotra, learned counsel for the applicant in Cri. Application (BA) No. 1366/2021 adopts the arguments of Mr. Dixit, learned counsel for the applicants in Cri. Application (BA) No. 26/2022 and further submits that in so far accused No. 3/applicant Ankush is concerned, there is no intention to commit any offence under Section 307 of the IPC, which would be indicated from the fact that the action of assault attributed to the applicant was on the left hand of the victim No. 2. He therefore submits that the applicant who is 19 years of age and has already been in incarceration since 2.9.2021, be enlarged on bail.

6] Mr. Chutke, learned APP for State submits that all the accused have been identified and the applicant in Cri. Application (BA) No. 1366/2021, Ankush as well as the applicant No. 1 in Cri. Application (BA) No. 26/2022 namely Ayush have been specifically attributed the roles in the matter of assault to the victims. He further submits that though the charge-sheet has been filed on 25.11.2021, considering the nature of the accusations and the fact that the incident has been witnessed by as many as 4 eye-witnesses and the applicants having been identified, the application in so far as Ayush and Ankush be rejected. In so far as the application in relation to Pawan, applicant No. 2 in Cri. Application (BA) No. 26/2022 is concerned, he submits that appropriate order

be passed.

7] Mr. Hitesh Behalani, learned counsel for the complainant opposes the application and submits that the action attributed to the applicants do not entitle them to bail, as it would have resulted in the death of the complainant, had he not been provided medical aid within a reasonable time. He further places reliance upon **Ram Govind Upadhya vrs. Sudarshan Singh, AIR 2002 SC 1475** (para 9) in support of his contention that the length of incarceration of the accused cannot be a relevant consideration for the purpose of enlarging them on bail.

8] Having heard the learned counsels, in so far as the accused No. 2 Pawan Jogeshwar Mandale in Cri. Application (BA) No. 26/2022 is concerned, there is no specific role of any assault attributed to him, though he was armed with a stick.

9] In so far as the applicant No. 1 Ayush in Cri. Application (BA) No.26/2022 is concerned, the entire material on record as well as the charge-sheet indicates a specific role attributed to him of assaulting the complainant on the head by an iron rod. The complainant in fact was required to be admitted in the hospital from 29.8.2021 and was fortunate to have been discharged on 2.9.2021. The applicant No.1 Ayush has been specifically identified as the

person having assaulted the complainant, considering which in so far as he is concerned, I am not inclined to accept his application, as of now. He may renew his request after a period of four months.

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10] In so far as the applicant Ankush in Cri. Application (BA) No. 1366/2021 is concerned, the allegations specifically attributes an assault by an iron pipe on the left hand of the victim Kishor Makode, which has resulted in a fracture of the elbow, as per the MLC report at page 115.

11] Considering the above position, and the fact that the entire investigation is over and the role attributed to these applicants, the charge-sheet having been filed on 25.11.2021, the further incarceration of these two persons in my considered opinion is no longer justified. Though reliance has been placed on **Ram Govind Upadhyay** (supra) which holds that the period spent in jail cannot be a relevant consideration in the matter of grant of bail, the observations were made in a case where the death of the victim had occurred in a charge under Section 302 of the IPC. In the instant case, though the aforesaid persons have been charged under Section 307 also of the IPC, however, in so far as accused No. 2 Pawan is concerned, no assault is attributed to him and so far as accused Ankush is concerned, the assault is on the left hand. Thus, **Ram Govind Upyadyay** in the above factual position would not be an obstacle in the matter of

granting bail to these persons. Hence, the following order.

[i] Cri. Application (BA) No. 1366/2021 is allowed and Cri. Application (BA) No. 26/2022 is partly allowed in so far as the applicant No. 2 Pawan Jogeshwar Mandale is concerned.

[ii] These applicants be released on bail on their executing a PR bond in the sum of Rs.1 lakh each with two solvent sureties in the like amount.

[iii] These applicants shall not tamper with the prosecution witnesses or try to undue influence them.

[iv] These applicants shall not enter the city of Paratwada during the course of the trial, except on the date when the matter is fixed before the learned Sessions Court for the purpose of attending the proceedings.

[v] These applicants shall not visit the site of the incident at all during the entire course of the trial.

12] It is made clear that even a single default may lead to cancellation of the bail.

13] The applications are accordingly disposed of in above terms.

Rvjalit

JUDGE

Digitally sign by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 31.01.2022 16:32