

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

Criminal Application (BA) No.369/2022

Prakash Gawai V State of Maharashtra thr PSO PS Sarmaspura, District Amravati

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

 Court's or Judge's Orders

Shri R.M. Daga, Advocate for applicant.
 Mrs. Mrunal Barabde, APP for State.

CORAM : ANIL S. KILOR, J.
DATE : 08-06-2022

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.189/2021 registered with Police Station Sarmaspura, District Amravati for the offences punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code (IPC).

2. The learned Counsel for the applicant submits that the offence was registered against the three accused persons and except the applicant, the other accused persons are released on bail. It is pointed out that the person who was holding iron rod i.e. Chetan Warthe, was also granted bail, whereas, the allegation in the First Information Report (FIR) depicts that the applicant was holding stick like the other accused Pawan, who was also released on bail. It is submitted that the application of the applicant for grant of bail was rejected on the ground that there are criminal antecedents unlike the other two accused

persons. It is pointed out that the two criminal cases which were filed earlier in the year 2003 and 2010, the applicant was acquitted.

3. He further argues that the investigation is completed in this case and the chargesheet has been filed by the prosecution. He further submits that the custody of the applicant is not necessary. He, therefore, submits that as other two accused persons are released on bail, the applicant is entitled for grant of bail on parity

4. The learned APP, on the other hand, strongly opposed the application and submits that there are eye witnesses and the statements of the eye witnesses are filed along with the chargesheet. Thus, she submits that there is sufficient incriminating material available on record to prima facie show the involvements of the applicant in the alleged offence.

5. I have perused the chargesheet and also the contents of the First Information Report (FIR). From the FIR, it can be seen that it was registered against the three accused persons including the applicant. As far as two other accused persons are concerned, they are already released on bail by the learned Sessions Judge. The bail application of the applicant was rejected on the ground that there are criminal antecedents. However, it can be seen

that in both the said criminal cases the applicant was acquitted.

6. As far as parity is concerned, the case of the applicant is at a better footing than the case of Chetan Warthe, who was assaulted by iron rod, whereas other accused Pawan and applicant alleged to have been assaulted by sticks.

7. In that view of the matter and as the role of the three accused persons is same, I find substance in the argument of the learned Counsel for the applicant that as the other accused persons are released on bail, the applicant is also entitled for grant of bail on parity.

8. Furthermore, as the chargesheet has already been filed and the custody of the applicant is no more required and as there is nothing to show that the applicant would pressurize the prosecution witnesses or tamper with the evidence of the prosecution and/or he will not be available for trial, I pass the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant-Prakash s/o Akaram Gawai be released on bail on furnishing P.R. Bond of Rs. 15,000/- with one solvent surety in the like amount in Crime No.189/2021

registered with Police Station Sarmaspura, District Amravati for the offences punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code.

(Anil S. Kilor, J.)