

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

CRIMINAL APPLICATION (BA) NO.542 OF 2022

(DHIRAJ PRALHADRAO GAWANDE....VS.. STATE OF MAH. THR. PSO PS CIVIL LINES, AKOLA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.M.Daga, Advocate for Applicant.
Shri S.D.Sirpurkar, A.P.P. for Non-applicant /State.
Shri Avinash Gupta, Sr.Adv. a/b Shri N.R.Saboo, Adv. to assist Prosecution.

CORAM : ANIL S. KILOR, J.

DATED : NOVEMBER 28, 2022.

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.225 of 2019, registered with Police Station, Civil Lines, Akola for the offences punishable under Sections 302, 143, 147, 148, 149, 201, 109, 323, 327 and 506 of the Indian Penal Code and Section 3 of the Prevention of Damage to the Public Property Act, 1984.
3. It is the case of prosecution that on 06/05/2019 one Pravin Kisanrao Hundiware has lodged report, alleging that on said date at about 11:45 a.m. First Informant and his father deceased Kisanrao were discussing their case with their Advocate Mr. Dhoot in the office of Assistant Charity Commissioner, Akola, that time 10-15 persons came in the office of Assistant Charity Commissioner and all of a sudden they started assaulting Kisanrao by means of wooden chairs. Due to the said assault, Kisanrao fell on ground and trying to save himself.

At that time accused Vikram Gawande took out the fire extinguisher and assaulted on the head of Kisanrao, accused Ranjit assaulted by means of “Tocha” (a pointed article) and the other accused persons, including the applicant, had also assaulted Kisanrao by means of wooden chairs, due to which Kisanrao died. On the said report, the aforesaid offence was registered and charge sheet came to be filed.

4. The learned counsel for the applicant submits that no specific role is attributed to the applicant in the F.I.R. and if the statement recorded under Section 161 of the Code of Criminal Procedure (Cr.P.C.) is taken into consideration, there are contradictions. It is submitted that the co-accused Satish, Vishal and Pravin were already enlarged on bail and the allegations against them are similar as are made against the present applicant. It is further submitted that the Post Mortem Report shows cause of death as ‘head injury’ and if the Query Report is seen, it can safely be said that the injuries, which were responsible for causing death, were not caused by the present applicant.

5. In this case, some co-accused have been released on bail and therefore, the applicant is entitled for bail on the principle of parity.

6. On the other hand, Shri Gupta, learned Senior Advocate, who is assisting the prosecution, strongly opposed the application and submits that the role of the present applicant and the co-accused, who were released on bail, is not similar. Further, it is submitted that the offence is very serious and the alleged incident took place in the office of Assistant Charity Commissioner, Akola. He, accordingly, prays for rejection of the present application.

7. The learned A.P.P. has reiterated the submissions made by the learned Senior Advocate.

8. I have perused the charge-sheet. The offence is very serious and the alleged incident took place in the office of Assistant Charity Commissioner, Akola. The accused brutally assaulted the deceased and committed murder. On perusal of the statements of witnesses, *prima-facie*, it appears that the applicant is the main assailant, who assaulted the deceased with wooden chair, due to which the deceased fell down.

9. As far as contradiction in the contents of the F.I.R. and the statements of witnesses is concerned, it is a matter of trial. However, such contradiction, at this stage, cannot be said to be sufficient for grant of bail in such a heinous crime.

10. The co-accused released on bail cannot be said that they are similarly circumstanced, hence, principle of parity will not apply.

11. There is ample incriminating material available against the applicant and considering the statements of the eyewitnesses and the fact that if the applicant is released on bail there is every possibility that he may pressurize the prosecution witnesses, I am not inclined to grant bail to the applicant. Accordingly, I pass the following order:

The Criminal Application is **rejected**.

Pending application(s), if any, shall stand **disposed of**.

JUDGE

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