

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

CRIMINAL APPLICATION (BA) NO.620 OF 2022

Gajanan Vaitkar **Versus** State of Maharashtra, through P.S.O., P.S. Shivaji Nagar, Khamgaon.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anil Mardikar, Sr. Counsel a/b Shri A.M. Kshirsagar, Counsel for the applicant.

Mrs S.Z. Haider, A.P.P. for the non-applicant/State.

Shri Mahesh Rai, Counsel for assist to protection.

CORAM : ANIL S. KILOR, J.

DATED : 01/07/2022

1. The applicant is seeking bail in connection with Crime No. 726/2021, registered with Police Station Shivaji Nagar, Khamgaon Tq. Khamgaon, Dist. Buldhana, for the offences punishable under Sections 498-A, 304-B, 323, 504 read with Section 34 of the Indian Penal Code, 1860.

2. The learned counsel for the applicant submits that except the applicant all co-accused have been released on bail. He further submits that as the investigation is over, his further custody is not necessary, accordingly, he prays for grant of bail.

3. Shri Anil Mardikar, learned Senior Counsel has drawn attention of this Court to the order passed by the coordinate bench of this court, while granting bail to the parents of the applicant. He submits that paragraph No.2 of the said order is relevant to find out the nature of injuries on the person of the deceased. Accordingly, he submits that considering the allegation and the material available in the charge-sheet, the applicant is entitled for grant of bail on parity.

4. He submits that the applicant is in jail from last eight months and there is no likelihood that in near future the trial will be concluded. Hence, he submits that keeping the applicant in jail for uncertain period will amount to pre-trial conviction.

5. Learned APP strongly opposes the application and points out that after showing disinclination to grant bail by this Court in earlier round, the application was withdrawn and therefore on merit this Court may not consider the case of the applicant for grant of bail.

6. Learned APP further submits that the applicant cannot claim parity, as the case of the parents is on different footings than the case of the applicant. She further states that as the offence is serious and because the sufficient

material is there to show the involvement of the applicant, his bail application may be rejected.

7. Shri Mahesh Rai, learned counsel who is assisting the prosecution on behalf of the complainant opposes the present application and reiterated the submissions of the learned APP.

8. I have perused the Charge-sheet and FIR.

9. This Court, while granting bail to the parents of the applicant has observed thus:

2] Today learned APP with the assistance of learned counsel Mr. Rai submits that there is nothing in the charge-sheet to indicate that the ecchymosis patches and the injection pricks on the body of the deceased were present on 25.11.2021. She however submits that the photographs indicating the same were taken by Veena Vijay Wasankar (pg.159). However, the statement of Veena indicates that the photographs were taken on 30.11.2021, when the deceased was still alive and taking treatment in the hospital. As per the statement of learned senior counsel Mr. Mardikar, the medical record of Silver City Hospital indicates that there are as many as 74 injections administered to the deceased during the course of the treatment, however, that is besides the point, as the ecchymosis patches and the injection pricks are not demonstrated to be on the body of the deceased on 25.11.2021, considering which looking to the age of the applicants, which is 70 and 60 years respectively, I do not see any reason to continue their further incarceration, as the charge-sheet is already filed on record....”

10. Considering the above referred para and the fact that investigation is over and the charge-sheet has already filed, as such, the custody of the applicant is not necessary.

11. As far as, the order passed by this Court on the earlier application of the applicant is concerned, the said application was withdrawn on expressing disinclination by this Court to grant bail. However, this Court had granted liberty to the applicant to move a fresh application on filing of the charge-sheet.

12. The present application is filed after filing of the charge-sheet and therefore it can not be said that after withdrawal of the first application, there is no change in the circumstances.

13. In the above backdrop, as the applicant is in jail from last about eight months and there is no likelihood that in near future, the trial will be concluded. In the circumstances, keeping the applicant in jail for uncertain period, particularly when the custody of the applicant is not required, would amount to pre-trial punishment. Accordingly, I pass the following order:

- i) The application is **allowed**.

- ii) It is directed that the applicant shall be released on bail in connection with Crime No. 726/2021, registered with Police Station, Shivaji Nagar, Khamgaon, Tq. Khamgaon, District Buldhana, for the offences punishable under Sections 498-A, 304-B, 323, 504 read with Section 34 of the Indian Penal Code, on furnishing P.R. Bond in the sum of Rupees 25,000/- with one solvent surety in the like amount.
- iii) The applicant shall attend the concerned police Station on 1st and 16th of each month between 10.00 a.m to 12.00 noon and thereafter as and when their presence is required.
- iv) The applicant shall not tamper with the prosecution evidence.
- v) The State is at liberty to move application for cancellation of bail, in case of breach of any condition or the applicant repeats the similar offence.

The criminal application is disposed of, accordingly.

[ANIL S. KILOR, J.]