

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

Criminal Application (BA) No. 629 of 2022

Vivek S/o Pandurang Godbole

Versus

State of Maharashtra, through Police Station Officer,
Police Station Panchpaoli, Dist.Nagpur

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

Court's or Judge's Order

Shri D.V.Chauhan, Advocate for the applicant.
Shri V.A. Thakare, APP for the State/non-applicant.
Shri Amol M.Jaltare, Advocate and Shri Aditya S.
Pande, Advocate assist to prosecution.

CORAM : ANIL S. KILOR, J.

DATED : 13th JULY, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 666 of 2020 registered with Police Station Panchpaoli, Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Shri Chauhan, learned counsel for the applicant submits that there are total three accused persons against whom the present First Information Report was registered and out of three, two accused

persons have already been released on bail. He, therefore claims parity in this case.

3. It is submitted that there are no criminal antecedents to the discredit of the applicant.

4. It is further submitted that there are three eye witnesses and if their statements are considered alongwith other material collected by the prosecution like CCTV footage or postmortem report, identification parade etc., there are many discrepancies, which creates doubt about the veracity of the story of the prosecution.

5. Shri Chauhan, learned counsel for the applicant draws attention of this Court to the statement of two witnesses namely Mangesh Ramesh Wani and Krishna Jairam Durbude, recorded under Section 164 of Code of Criminal Procedure and submits that these statements do not support the case of the prosecution.

6. Thus, in the backdrop of above referred submissions made by the learned counsel for the applicant, he prays for grant of bail to the applicant.

7. On the other hand, Shri Thakare, learned Additional Public Prosecutor strongly opposed the present application and submits that while considering the bail application of other two accused persons, this

Court after seeing the CCTV footage, has observed the role of the present applicant in the alleged offence. Thus, he submits that there is incriminating material against the applicant.

8. It is further submitted that the above referred observations of this Court, are sufficient to say that the role of the applicant is not similar with the role of two accused persons.

9. It is submitted that the report dated 17th December, 2020 by Suraj Durgaprasad Tiwari sufficiently depicts the motive of the applicant, behind the murder of deceased. It is submitted that the applicant is the main accused who with pre-meditation committed the murder.

10. Learned Additional Public Prosecutor has further drawn attention of this Court to the CCTV footage panchanama and therefrom he has pointed out the overt act of the applicant, in the alleged crime.

11. It is further pointed out from the postmortem report that there were 38 injuries found on the person of the deceased, which show that the deceased was brutally murdered. Thus, learned Additional Public Prosecutor submits that considering

the seriousness of the offence and severity of the punishment, this Court may not grant bail to the applicant. In support of his submission, he has placed reliance on a judgment of the Hon'ble Supreme Court of India in the case of Virupakshappa Gouda and another Vs. State of Karnataka and another¹

12. Shri. Jaltare, learned counsel, who is assisting the prosecution on behalf of the complainant, reiterates the submission of the learned Additional Public Prosecutor and prays for rejection of the present application.

13. I have perused the case diary, the orders passed by this Court on the applications for grant of bail of other two accused persons and reply filed by the State.

14. The Hon'ble Supreme Court of India in the case of *Virupakshappa Gouda and another Vs. State of Karnataka and another (supra)*, has held thus:

16. In CBI vs. V.Vijay Sai Reddy, the Court had reiterated the principle by observing thus : (SCC p.465, para 34)

“34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused,

1 (2017) 5 SCC 406

circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.” (emphasis in original)

17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from *Neeru Yadav vs. State of Uttar Pradesh* and another, wherein the Court setting aside an order granting bail observed: (SCC pp 514-15, para 16)

“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has

enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. [The] society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

15. In the backdrop of above referred well settled law as regards the principles to be observed while considering the prayer for grant of bail, I proceed to consider the submissions of the learned counsel for the respective parties, on merit.

16. The report lodged by complainant Suraj Tiwari on 17th December, 2020 says that his younger brother owned a plot admeasuring 3000 square feet at Manishnagar where he was running a Chinese shop. It

further states that the adjacent land is owned by present applicant. The report further states that the applicant was continuously pressurizing the deceased to sell his plot, to such suggestion the deceased refused as he was running a business over the said land. The said report further discloses the fact that there used to be frequent quarrels on the said issue between the deceased and the present applicant. Thus, from the complaint, *prima facie* motive of the applicant can be gathered, to commit the present offence.

17. During the investigation, the Investigating Officer has collected CCTV footage from the CCTV installed at Saoji Bhojnalaya and on seeing it the panchanama was prepared on 22nd December, 2020. It has come in the panchanama that there was an assault within the premises and the applicant was seen coming out and then picking up, initially spatula and then knife and then going inside the restaurant.

18. The co-ordinate Bench of this Court while considering the prayer of other two co-accused, had seen CCTV footage and observed thus:

Criminal Application (BA) No. 1056 of 2021.

“5. I have seen the CCTV footage. It appears from the CCTV footage on which the prosecution is heavily relying that after the

co-accused Vivek Godbole picked up the knife, when he was trying to enter the hotel, the applicant was attempting to dissuade him from doing so. Be that as it may, since it would not be appropriate to minutely evaluate the material on record lest some prejudice will be caused to co-accused if and when they apply for bail, it would suffice to note that considering the role of the applicant, even going by the case of the prosecution, a case for bail is made out.”

Criminal Application (BA) No. 1276 of 2021.

“3. According to the prosecution, the applicant is the owner of chinese food restaurant, where co-accused Vivek and Mohsin were having liquor with the deceased. According to the prosecution, the CCTV footage clearly establishes that there was an assault within the premises and co-accused Vivek is seen coming out and then picking up, initially spatula and then knife and then going inside the restaurant.”

19. In the CCTV footage it was also seen that after the alleged incident, when the applicant came out of the said restaurant, his hands were having blood.

20. The postmortem report, more particularly, column 17 discloses that, there were 38 injuries on the person of the deceased out of which 19 were the stab injuries and the other were the incise wound.

21. The number and the nature of injuries are sufficient to show that the deceased was brutally murdered.

22. Thus, having considered the incriminating material available *prima facie* involvement of the applicant in the alleged offence is apparent.

23. This Court while considering the application for grant of bail filed by other two accused persons have already recorded the findings that the role of the present applicant is not similar with the role of those two accused persons. I also subscribe the said view and thus applicant cannot claim parity in this case.

24. In the circumstances, considering the nature of accusation, the nature of evidence in support thereof, severity of punishment, character of the accused and the motive he was carrying at the time of alleged incident, I am of the opinion that applicant is not entitled for grant of bail.

25. Moreover, the possibility as expressed by the learned Additional Public Prosecutor that the applicant may pressurize the prosecution witnesses or tamper with the prosecution evidence, cannot be ruled out in the light of above referred observations.

26. Moreover, in the light of the observations made by the Hon'ble the Supreme Court of India in the case of *Virupakshappa Gouda and another Vs. State of*

Karnataka and another (supra) that “a society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law”, I pass the following order.

- i. Criminal application is rejected.

[ANIL S. KILOR, J.]

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