

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

CRIMINAL APPLICATION (BA) NO.755 OF 2022

Subhash S/o Sadashiv Chavan

Versus

State of Maharashtra, through Superintendent of Police CID (Crimes), Gondia

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

Court's or Judge's Order

Shri Avinash V. Gupta, Senior Advocate a/w Shri A.A. Gupta, Adv.
for the applicant.

Shri S.D. Sirpurkar, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 01/08/2022

1. The applicant is seeking bail in connection with Crime No.155 of 2021, dated 27.05.2021, registered with Police Station Amgaon, District: Gondia, for the offences punishable under Sections 302, 330 and 201 read with Section 34 of the Indian Penal Code.

2. Shri Gupta, learned Senior Advocate for the applicant submits that the applicant was Police Station Officer of Police Station Amgaon, Dist. Gondia, at the relevant time and now he is under suspension.

3. It is submitted that none of the statement of witnesses including eye witnesses, attributed any overt act against the applicant in the alleged assault or beating to the deceased, which resulted into the death of the deceased.

4. It is submitted that if the allegations made against the applicant are considered on its face value, the offence against the applicant will not travel beyond Section 201 of the Indian Penal Code for which the maximum punishment is seven years.

5. Shri Gupta, learned Senior Advocate has drawn attention to the statements of witnesses, who were with the deceased at the relevant time, in jail.

6. There were three persons who were along with the deceased, namely Rajkumar Markam, Suresh Raut and one Sachin Patle. It is pointed out from the statements of these witnesses that, the allegations as regard assault or beating are against the accused persons namely Shri Jadhav, Shri Khobragade, Shri Ukey and Shri Kamble and not against the applicant.

7. It is further pointed out that in Identification parade, Sachin Patle who is the eye witness did not identify the present applicant. Thus, he submits that, considering the material available on record, Section 302 of the IPC will not attract against the applicant. Whereas, considering the allegations that hard-disk of CCTV footage had got changed by the applicant, Section 201 of the IPC will attract against the applicant.

8. The learned Senior Advocate further submits that the applicant is in jail since last 14 months and considering his role in the alleged offence and further the fact that the charge-sheet has been filed, his further custody is not required and accordingly, he prays for grant of bail.

9. On the other hand, Shri Sirpurkar, learned APP strongly opposes the present application and submits that if the statements of witnesses are considered in totality and the sequence of various incidents which took place during the night on 22.05.2021, it can be seen that being Police Station Officer, the applicant failed to perform his duty. It is submitted that he could have prevented the other accused persons from committing the offence.

10. It is submitted that the statements of witnesses are sufficient to show that the applicant was present in the Police Station where the co-accused had mercilessly beaten the deceased. Thus, he submits that everything was done by the co-accused on the instructions of the applicant and therefore, the applicant is equally responsible for the cause of death of the deceased.

11. He further submits that considering the chain of events, the offence cannot be bifurcated by separating the role of the applicant.

12. Shri Sirpurkar, learned APP has pointed out that on mid night at 03.30 p.m. sister of the deceased was arrested and brought to the Police Station, which itself is sufficient to show the conduct and behavior of the applicant in the alleged crime.

13. In reply to the same, Shri Gupta, learned Senior Advocate has pointed out from the statement of a witness who is lady staff member of the Police Station that, on the statement of the deceased that he has kept the stolen goods at his sister's place, a search was carried out at the house of the sister of the deceased. However, nothing was found at her place and while returning back, the sister of the deceased herself voluntarily requested the Police that she be allowed to accompany her brother, the deceased and accordingly, she was permitted. It is pointed out that, she was never arrested or fetched to the Police Station forcibly. It is further pointed out that after some time, on her request she was taken back to her home.

14. The learned APP further argues that the threats given by the applicant are also sufficient to show that the involvement in the alleged offence and accordingly, he prays for rejection of the present application.

15. I have perused the Charge-sheet and the First Information Report (FIR).

16. The statements of witnesses namely Bhaskar Jamdal, Narendra Asaram Tarare, Suresh Dhanraj Raut, Sau Rita Sudam Puram, show that co-accused Mahavir Jadhav, Khemraj Khobragade, Arun Ukey and Dattatray Kamble repeatedly assaulted the deceased.

17. None of the witnesses states that the applicant had taken part in the alleged assault. No overt act is attributed against the applicant relating to the alleged assault or beating.

18. The statement of Narendra Asaram Tarare who is a Police man, speaks about the instructions issued by the applicant on next day about the CCTV data and further instructions not to disclose that, in the night the Police visited the house of the sister of the deceased. However, it is not sufficient to attract Section 302 of the IPC against the applicant.

19. The Post Mortem report shows that there were 27 external injuries on the person of the deceased. The cause of death was head injury, due to hard and blunt object.

20. There is no *prima facie* evidence to show that any of the injuries caused to the deceased, was caused because of any overt act of the applicant. The only fact that

the applicant was present in the Police Station at the relevant time as Police Station Officer, itself is not sufficient to attract the offence under Section 302 of the IPC in case of custodial death.

21. In this case, if the allegations against the applicant are considered holistically, it will not travel beyond Section 201 of IPC.

22. The applicant is in jail since last 14 months and the investigation is completed and no further custody of the applicant is necessary. Moreover, there is no likelihood that in near future, the trial will commence. The Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb*¹, has observed thus:

“15.This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society

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in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

23. In the light of the above referred observations and considering the above referred noted facts relating to the role of the applicant in the present matter, I am of the

opinion that the applicant is entitled for grant of bail.

24. As far as the apprehension of the learned APP that if the applicant is released on bail, he may pressurize the prosecution witnesses or tamper with the prosecution evidence is concerned, the same can be addressed by imposing certain stringent conditions. Thus, in the above referred backdrop, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No. 155 of 2021, registered with Police Station Amgaon, District: Gondia, for the offences punishable under Sections 302, 330 and 201 read with Section 34 of the Indian Penal Code on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the territorial jurisdiction Dist. Gondia, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address along with name of the nearest Police Station and shall attend the concerned Police Station on 1st day of

each month between 10.00 a.m. to 12.00 noon,
till the culmination of the trial.

- e) The applicant shall not tamper with the
prosecution witnesses.

The criminal application is **disposed of**
accordingly.

[ANIL S. KILOR, J.]