

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

CRIMINAL APPLICATION (ABA) NO. 504 OF 2022

Tanbaji s/o Yeshwant Zade and another **Versus** State of Maharashtra, thr. PSO., P.S. Sindi (Railway), Wardha.

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

Court's or Judge's Order

Shri M.V.Rai, counsel for the applicants.

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

CORAM : ANIL S. KILOR, J.

DATED : 02/08/2022

1. The applicants are seeking pre-arrest bail in connection with Crime No.103/2019, registered with Police Station, PSO Sindi (Railway), District Wardha, for the offences punishable under Sections 302, 326, 324 and 34 of the Indian Penal Code.

2. In this case, the FIR was registered on 07/05/2019 for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code, in connection with which bail was granted to the applicants on 08/05/2019. On 09/05/2019 i.e. a day after the bail was granted to the applicants, the injured Raju Talwekar died and Section 302 of the Indian Penal Code came to be added.

3. On 08/05/2019, the Investigating Officer made an application before Judicial Magistrate First Class, Seloo, for cancellation of bail granted to the applicant. The

said application was rejected and the Revision was preferred, bearing No. 29/2019 which is pending on the file of learned Sessions Court.

4. In the meantime, the charge-sheet was filed before the Judicial Magistrate First Class, Seloo, who committed the same to the learned Sessions Court on 16/10/2020 and after issuance of summon, the applicants appeared and thereafter they attended the Court regularly.

The applicants, thereafter, moved an application apprehending their arrest, in the event, the Revision is decided against them. While considering the said request, the learned Sessions Court has observed that after the injured has succumbed to injuries, Sections 326 and 302 of the Indian Penal Code were added and despite the remedy available with the applicants, they have not available the same and they continued to be on bail. It was observed that after the addition of Sections 326 and 302 of the Indian Penal Code, the applicants/accused ought to have surrendered and they should have applied fresh application for bail in the offence under Section 326 and 302 of the IPC

5. In the above referred factual matrix, the learned Sessions Court rejected the bail application of the applicants.

6. The learned counsel for the applicant, therefore, submits that, the applicants are on bail from last three years and there is no complaint about misuse of liberty

by the applicants. It is pointed out that, the charge-sheet has already been filed.

7. It is submitted that, in the circumstances, rejection of bail application for grant of pre-arrest bail by the learned Sessions Court for the offences punishable under Section 302, 326, 324 read with Section 34 of the Indian Penal Code is illegal and accordingly, he prays for grant of pre-arrest bail in the said crime.

8. On the other hand, learned APP strongly opposed the present application and submits that the findings recorded by the learned Sessions Court is just and proper and for the lapses on the part of the applicants, as observed by the learned Sessions Court, this Court may not consider the request of the applicant.

9. I have perused the record, charge-sheet and the orders passed by the learned trial Court granting bail and rejecting the subsequent application of the applicant for grant of pre-arrest bail.

10. In this case, admittedly, the applicants are on bail from last about three years and during this period, the charge-sheet has been filed. Moreover, the revision against the order rejecting the application for cancellation of bail is pending and there is no decision till date on the said application. Though, the offence is serious, however, considering the time period which has already been lapsed and time period the applicants are on bail and the fact that, they were not arrested after addition of Sections 326 and

302 is sufficient to say that the custody of the applicants are not necessary.

11. In the circumstances, considering the above referred facts, I am of the opinion that the applicants are entitled for grant of pre-arrest bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) The order granting ad-interim anticipatory bail on 07/07/2022, is hereby confirmed with modification that the applicant shall attend the concerned Police Station on 1st and 16th day of each month between 10.00 a.m. to 12.00 noon till culmination of trial.

[ANIL S. KILOR, J.]