

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

CRIMINAL APPLICATION (BA) NO.940 OF 2022

Pravin s/o Sanjiv Gundajwar **Versus** State of Maharashtra, through P.S.O., Yavatmal City, Tq. & Dist.Yavatmal.

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

Court's or Judge's Order

Ms Isha Thakare, Adv. h/f Shri F.Mirza, Advocate for the applicant.
Mr S.A.Ashirgade, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 14/09/2022

1. The applicant is seeking bail in connection with Crime No. 824/2021, registered with Police Station Yavatmal City, District: Yavatmal, for the offences punishable under Sections 302, 34 of the Indian Penal Code read with Section 4 (25) of the Arms Act.
2. The learned counsel for the applicant submits that on the basis of an extra-judicial confession which was disclosed by the Constable in his statement dated 16/11/2021, stating that he received a phone call of one Ankit Gawande on 13/11/2021 informing that the accused confessed that they have committed the alleged offence.
3. She submits that, the statement of Police Constable- Nilesh Rathod about extra-judicial confession, creates doubt about its veracity, as there is no entry in the

Station Diary about such phone call or extra-judicial confession.

4. The learned counsel for the applicant further states that, there is no recovery or any other direct evidence against the applicant. However, only on the basis of the above referred alleged extra-judicial confession, the applicant was arrested and he is in jail since 13/11/2021.

5. The learned counsel for the applicant further submits that, on completion of the investigation, the charge-sheet has been filed and as such further custody of the applicant is not necessary, particularly in the backdrop of the above referred facts. Accordingly, she prays for grant of bail.

6. On the other hand, learned APP strongly opposes the present application and submits that, immediately after receiving the information as regards extra-judicial confession made by the accused to Ankit Gawande, the accused were arrested. He, therefore, submits that as there is sufficient material to show involvement of the applicant, this Court may not grant bail to the applicant.

7. In the backdrop of the submission of both the learned counsels, I have perused the charge-sheet and the application.

8. The alleged incident took place on 16/11/2021 at 20.50 hours and the offence was registered on 11/11/2021 at 4.02 hours.

9. As per the prosecution story, Nilesh Rathod, a Police Constable attached with the Police Station Yavatmal City, received a phone call from one Ankit Gawande on 13/11/2021 who made disclosure to him about the extra-judicial confession made by the accused to Ankit Gawande. It is stated that, immediately thereafter, accused persons were arrested.

10. The above-referred fact of extra-judicial confession and phone call of Ankit Ganwande came in the statement of Nilesh Rathod-Constable, which was recorded on 16/11/2021. However, no explanation has been offered by the prosecution that why his statement was not recorded immediately after he received the phone call from Ankit Gawande on 13/11/2021.

11. There is also no explanation offered by the prosecution that why no entry was made in the Station Diary about such phone call or extra-judicial confession.

12. Thus, it *prima-facie* creates doubt about veracity of the extra-judicial confession which is the only basis, in this case, to arraign the applicant as accused. There is no other incriminating material against the applicant.

13. In the above-referred backdrop, as the investigation is completed and the charge-sheet has been filed, and as the applicant is in jail since 13/11/2021, I am of the opinion that, further custody of the applicant is not necessary. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.

- b) It is directed that in connection with Crime No. 824/2021, registered with Police Station Yavatmal City, District: Yavatmal, for the offences punishable under Sections 302, 34 of the Indian Penal Code read with Section 4 (25) of the Arms Act, the applicant shall be released on bail 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 Yavatmal City, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address along with name of the nearby Police Station and shall attend the concerned Police Station on 1st and 16th 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.]