

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 1186 OF 2022

Maruti Korkuji Pakhale .Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr R. D. Dharmadhikari, Advocate for the applicant
Mr S. M. Ghodeswar, APP for the State

CORAM : G.A. SANAP, J.
DATE : OCTOBER 18, 2022.

(1) Heard.

(2) The applicant is accused No.3 in Crime bearing No. 160 of 2022 registered at Arvi Police Station, Wardha for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. His bail application was rejected by the learned Sessions Judge, Wardha. After rejection of his bail application, he has approached this Court for bail under Section 439 of the Code of Criminal Procedure.

(3) According to this applicant, on 28.02.2022, on mere suspension he was arrested. There is no iota of evidence to establish his role and complicity in the commission of crime. There is no enmity between him and the deceased. The charge-sheet has been filed. His detention is not necessary and warranted.

(4) The prosecution has opposed the application. It is the case of the prosecution that the crime committed by the applicant with remaining two accused is serious. There is overwhelming evidence to establish the role and complicity of the applicant in the commission of the crime with remaining two accused. The learned APP by drawing my attention to the observations made by the learned Sessions Judge submitted that the available evidence has been *prima facie* analyzed and on doing so the learned Sessions Judge found that no case was made out for bail. The learned APP submitted that the son of the deceased and other witnesses are resident of same village. If the bail is granted to the applicant then the possibility of tampering with the prosecution evidence and pressurizing the important witnesses cannot be ruled out. The learned APP submitted that before carrying the deceased to the hospital, on the spot the deceased had stated the cause of the injuries sustained by him and the incident of setting him on fire by this applicant and remaining two accused. It is pointed out that the deceased, on inquiry made by his son, stated that he was beaten by accused persons and he was set on fire by pouring kerosene on his person.

(5) With the assistance of the learned Advocate for the applicant and learned APP for the State I have gone through the record and proceedings and particularly the observations made by the learned Sessions Judge on *Prima*

facie analysis of the material on record. It be noted that while deciding the bail application, the seriousness of crime, the stage of investigation, the possibility of the accused fleeing from justice and also the possibility of tampering with the prosecution evidence or pressurizing the prosecution witnesses need to be kept in mind. On going through the material placed on record, I am of the considered opinion that the incident in this case is serious. There was no previous enmity between the deceased on one hand and the accused persons on the other hand. It is seen on perusal of the record that the deceased was mercilessly beaten. This fact can be seen on perusal of the postmortem report and particularly column No. 17 of the same. In column No. 18 it has been recorded that the injuries found on the person of the deceased were *ante-mortem* in nature.

(6) The informant is the son of the deceased. The prosecution is heavily relying upon his statement, which if proved, would have a sanctity of oral dying declaration. There are other independent witnesses who have stated that the deceased was seen in the company of the accused persons. The house, where the deceased was assaulted and burnt, belongs to accused -Subhash. In the facts and circumstances, therefore, the apprehension placed on record by the learned APP that the possibility of tampering with the prosecution evidence, pressurizing and threatening the prosecution

witnesses cannot be ruled out is fully justified and well founded. The learned Advocate for the applicant on the basis of the material placed on record made an attempt to point out that the material is not sufficient to establish the role and complicity of the applicant in this crime. In my view, this is not a stage to undertake the inquiry as to the credibility of the witnesses. It is a trite law that while deciding the bail application the Court is not supposed to touch the merits of the matter. If the merits and demerits of the matter are dealt with, then in that event the possibility of prejudice either to the accused or to the prosecution can't be ruled out. In this crime, charge sheet has been filed. This has been made ground for grant of a bail to the applicant. In my view, on the basis of this, at the most it could be said that the investigation is over and for the purpose of custodial interrogation the detention of the applicant may not be warranted. However, on the basis of material on record it would not be possible to accept the submissions advanced on behalf of the applicant. In the totality of the facts and circumstances I am of the view that no case has been made out to enlarge the applicant on bail.

(7) There is apprehension in the mind of the applicant, as can be seen from the facts stated in the application, that his trial may not commence in the near future. In my view, this apprehension, at the first blush, is

unfounded. Certainly, it can be taken care of by following the procedure at the behest of the applicant. It needs to be stated that the applicant and the other accused has a right to make an application before the Session Judge for framing the charge. It is seen that so far they have not made such an application. Even if it is assumed that this apprehension is well founded, in my view same can be taken care of by making appropriate observations. In the fact and circumstances, I deem it appropriate to give liberty to applicant and remaining two accused to make an application before the learned trial Judge in writing for framing the charge. It is made clear that as and when such application is made in writing by the applicant and the remaining two accused, the learned trial Judge shall proceed with the trial by framing the charge and conduct the trial consistent with the mandate of Section 309(1) of the Code of Criminal Procedure. With this I conclude that no case is made out for grant of bail.

The criminal application stands **dismissed**. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Namrata