

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

...

CRIMINAL APPLICATION (BA) NO. 4/2023

Ganesh Pralhad Jagdale

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Lonar, Dist. Buldhana

.. Respondent

.....
Ms. Krutika Patni, Adv.h/for Mr S.V. Sirpurkar, Advocate for the appli-
cant Mr. V.A.Thakare, APP for Respondent/state
.....

CORAM: ANIL L. PANSARE,J.

DATED : 18th January, 2023

PC:

Heard the learned counsel for the respective parties.

2. The applicant has filed present application under Section 439 of the Code of Criminal Procedure. He has been arrested in Crime No. 388/2022 registered at Police Station Lonar, Dist. Buldhana, for the offences punishable under sections 326, 143, 147, 148,149, 323, 506 of the Indian Penal Code.

3. Briefly stated, the prosecution case is that the informant's father was assaulted by as many as five persons, namely, Ketan Jagdale, Ganesh Jagdale, Pralhad Jagdale, Lata Jagdale and Macchindra Jagdale. Ketan had assaulted the father of the informant by means of axe on his legs; Ganesh (present applicant) had assaulted by means of iron rod on head and back; Pralhad and Lata have beaten him by fist and kick blows. Macchindra has played a crucial role in as much as he has held both the hands of the victim and was instigating the accused to beat the victim.

4. Ms. Krutika Patni, learned Advocate for the applicant submits that Macchindra has been released on bail by the learned Sessions Court vide an order dated 15.12.2022 in Criminal Bail Application No. 300/2022. Accordingly, she claims parity. On inquiry, she submits that there are no criminal antecedents against the applicant. The applicant is residing in his own house. Thus, he has strong roots in the society. She further submits that FIR itself would indicate that the incident had occurred because of old rivalry and dispute in respect of sand business.

5. The learned APP, however, has a strong objection to release the applicant on bail. He submits that the applicant is the one who has hit victim on his head. The victim was admitted in the hospital for about 8/10 days.

6. To my mind, the role played by Macchindra is equally crucial to what has been alleged against the applicant. In such cases, instigation to commit crime is something that motivates others and in that sense, the instigation could be said to be on a higher footing than what the co-accused do, on such instigation. The applicant, therefore, will be entitled for the benefit of parity.

7. That apart, the incident appears to be an outcome of some dispute over the sand business. The applicant is not a habitual offender. He also do not possess any previous criminal antecedents. No purpose will be served by keeping him behind the bars. The applicant could be put to terms to protect the interest of the prosecution.

8. Needless to mention that the observations made in this order are only for deciding this Bail Application and the Court below shall not get influenced by it.

9. Hence the order :-

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Ganesh Pralhad Jagdale, be released on bail, in connection with Crime No. 388/2022 registered with Police Station Lonar Dist. Buldhana for offences punishable under sections 326, 143, 147, 148, 149, 323, 506 of the Indian Penal Code, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter the territorial jurisdiction of Police Station Lonar, pending trial, except for complying bail conditions, i.e. (clause iv & v).
- (iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the mobile number and the residence without permission of the trial Court.
- (v) The applicant shall attend the concerned Police Station once in a week on every Friday, between 11.00 am to 2.00 pm, till filing of the charge-sheet.
- (vi) The applicant shall regularly attend the court and cooperate to complete the trial. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (vii) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so

as to dissuade him from disclosing such facts to the Court or any Police Officer.

(viii) The applicant shall not leave the territory of Buldhana District without prior permission of the Court, till the trial is over.

(ix) The applicant shall maintain law and order.

(x) In case of breach of any conditions, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

sahare