

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

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CRIMINAL APPLICATION (BA) NO. 123/2023

Gajanan Panditrao Ketkar

..Applicant

versus

The State of Maharashtra

Th: Its PS Mahuli Jahagir Dist. Amravati

..Respondent

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Mr. P.V. Navlani, Advocate for the applicant

Mr. S.M.Ghodeswar, APP for Respondent

Mr. P.R. Agrawal, Adv. (assist to prosecution)

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CORAM: ANIL L. PANSARE, J.

DATED : 11th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 08.07.2022 in Crime No.153/2022 registered with Police Station, Mahuli Jahagir, Dist.Amravati, for the offences punishable under Sections 302, 307, 324, 325, 143, 147, 148, 149 of the Indian Penal Code.

2. Briefly stated, the accusation against the applicant is that he and co-accused-Vijay Ketkar have committed the murder of one Shriram Ketkar.

3. The law was set in motion on 07.07.2022 by the brother-Ashok of the deceased. He states that on 7.07.2022 there occurred a quarrel between him and Vijay. The applicant and Vijay were possessing axe. The applicant's sons, namely, Rohan and Shubham were holding wooden sticks. Vijay has assaulted Shriram on his head by

means of an axe. The informant intervened to save Shriram. At that time, Sunita, wife of Vijay, caught hold of him and Vijay assaulted Shriram by means of axe. Shubham has assaulted Shriram on his hands and legs by means of wooden stick. The informant further states that when he intervened to save his brother Shriram, the applicant had assaulted him (informant) on his head, by means of axe. Rohan assaulted on his legs by means of wooden stick. Shriram became unconscious and was admitted to hospital where he succumbed to his injuries.

4. The supplementary statement of the informant has been recorded on 19.07.2022, wherein he has improvised his version. He states that the applicant and Vijay, have both assaulted Shriram on his head by means of axe. However, the injury report indicates that there was only one injury on the head of Shriram and that the cause of death, according to the post-mortem report, is the head injury. Thus, it is difficult to believe that both Vijay and the applicant have assaulted Shriram on his head by means of axe. It is difficult to understand as to how could there be only one injury out of two assault by means of axe. As such, the prosecution will get an opportunity to explain the said discrepancy, but for the time being, the improvisation made by the witness in the supplementary statement will be advantageous to the applicant, more so because in the supplementary statement, the witness has omitted to state that applicant has assaulted him on his head by means of axe, which statement finds place in the FIR.

5. The learned counsel for the applicant states that there is another reason why the version of Ashok is not believable. In the oral report he states that the sons namely Rohan and Shubham of the

applicant, were present at the spot and were holding wooden sticks. The report further indicates that Shubham has assaulted Shriram on his legs by means of wooden stick. He has invited my attention to the charge-sheet wherein it is stated that the Shubham was not present at the spot and that the CCTV footage obtained by the investigating agency would show that he was in Krishna Cyber Cafe, Amravati at the relevant time. On the basis of aforesaid evidence, Shubham has not been charge-sheeted for the offences alleged.

6. The learned counsel for the applicant has then invited my attention to the statement of Pushpa, the wife of the deceased. She has stated that Vijay and Gajanan (applicant) and Rohan Ketkar came in the village and assaulted her husband by means of wooden stick; they have assaulted on his head and legs. Thus, she blames all of them for the head injury.

7. Another witness is Vaishali, who is the daughter of the deceased. According to her, Gajanan and Vijay have assaulted her father by means of axe and that the assault was on his head. This witness blames two persons for the head injury.

8. Thus, it is argued that there is variance in the version of the prosecution witnesses and that therefore the applicant should get the benefit of the same.

9. The learned APP joined by learned Advocate for the informant, submit that the accusation is serious. Though there is some discrepancy in the statements of witnesses, the prosecution will get

opportunity to explain the same before the trial Court. The fact remains that applicant and Vijay are responsible for the offence and that therefore no benefit could be drawn by the applicant for the discrepancies which could be explained before the trial Court.

10. At this stage, the learned counsel for the applicant submits that Vijay is 100% visually impaired. Accordingly, he submits that the entire story has been concocted. When enquired, learned APP showed his inability to comment on the said fact. He however submits that witnesses indicate otherwise.

11. The learned counsel for the applicant has invited my attention to the order dated 21.11.2022 passed by the learned Sessions Court in Criminal Bail Application No.1364/2022 filed by Vijay. The Court noted the fact that Vijay has 100% visual impairment. The disability certificate has been issued by the Government of Maharashtra and the same has been placed on record.

12. If that be so, the Investigating officer himself ought to have brought this fact on record explaining as to how a blind person has committed a serious offence and how he has targeted the head of the deceased. The aforesaid fact coupled with discrepancies in the statement of the prosecution witnesses would be advantageous to the applicant, at least for releasing him on bail, particularly when in the FIR the applicant is not blamed for the fatal injury.

13. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant

is residing at the given address since long. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

14. In view of the above and considering the peculiar facts of the case and the nature of evidence against the applicant as also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

15. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

16. Resultantly, following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant – Gajanan Panditrao Ketkar, be released on bail in Crime No. 153/2022 registered with Police Station, Mahuli Jahagir Dist. Amravati, for the offences punishable under Sections 302, 307, 324, 325, 143, 147, 148, 149 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) 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 same till the final disposal of the case.

(iv) 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/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant shall maintain law and order.

(vii) 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.]

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