



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

**CRIMINAL APPLICATION (BA) NO. 277 OF 2023**

Nilesh @ Nishant S/o. Ashok Dorse

.Vs.

The State of Maharashtra, Through PSO, PS Kotwali, Distt. Nagpur

---

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

---

Mr L. B. Khergade, Advocate for the applicant  
Mr K. R. Lule, APP for the State

**CORAM : G.A. SANAP, J.**

**DATE : OCTOBER 18, 2023**

1.           Heard finally.
  
2.           This is an application under Section 439 of the Code of Criminal Procedure, 1973 made by the applicant/accused No.4 seeking bail in Crime bearing No. 132 of 2021 registered at Police Station Kotwali, Nagpur for the offences punishable under Sections 302, 504, 143, 144, 145, 147, 148 and 149 read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act and under Section 135 of the Maharashtra Police Act.
  
3.           Learned Advocate for the applicant/accused No. 4 submitted that accused No. 3 has been released on

bail by this Court. Accused Nos. 2 and 5 have been released on bail by the Additional Sessions Judge, Nagpur on the ground of parity with accused No.3. Learned Advocate submitted that accused No. 4 is similarly circumstanced and therefore, on the ground of parity he is entitled for bail. Learned Advocate submitted that the DNA report shows that the blood was not detected on the weapons, allegedly recovered from the accused. Learned Advocate submitted that merely because of recovery of the sword and knife bail cannot be denied to him. Learned Advocate submitted that accused No. 4 has been in custody from 25.05.2021 and as such, without any substantial progress in the trial his further incarceration is not necessary. Learned Advocate submitted that accused No. 4 is ready to abide by the condition that may be imposed by the Court.

4. Learned APP submitted that the learned Sessions Judge while rejecting the bail application of accused No. 4, by his order dated 14.12.2022, has categorically observed that accused No. 4 is not similarly circumstanced with accused Nos.2, 3 and 5. Learned APP submitted that accused No.1, at whose instance the second sword and knife, used in the crime, were

recovered, has not been released on bail. Learned APP submitted that considering the serious nature of the crime and the brutality displayed by the accused at the time of assault, on the deceased, he cannot be released on bail. Learned APP further submitted that there are independent eye witnesses and therefore, the possibility of pressurizing those witnesses cannot be ruled out. Learned APP further submitted that the deceased on the way to the hospital disclosed the names of his assailants to the informant, who is a police constable, and the name of accused No. 4 was specifically stated.

5. I have gone through the record and proceedings. Learned Advocate for the accused took me through the record and proceedings and particularly, the order passed by the Co-ordinate Bench of this Court in case of accused No.3. It is pointed out that no reliance can be placed on test identification parade. It is further pointed out that no reliance can be placed on the witnesses to deny the bail to the accused. In my view, the submissions made by the learned Advocate for the applicant touching the merits of the matter relating to the appreciation of evidence, at this stage, cannot be accepted. As far as the test identification parade is

concerned, the substantive evidence of the identification of the accused by the witness in the Court is substantive piece of evidence. The evidence in the form of test identification parade can be used as corroborative piece of evidence and by any means could not be said to be a substantive piece of evidence. Besides, the evidence relied upon by the prosecution, at this stage, cannot be put to scrutiny on any ground and based on the same no opinion can be expressed. If this submission is accepted and this evidence is held to be shaky, at this stage, it may cause prejudice to the prosecution without subjecting that evidence to the test of scrutiny by way of cross examination. The appreciation of evidence, at this stage, touching the credibility and merits of the evidence, can cause prejudice either to the prosecution or to the accused. It is not permissible in law. In a given case the Court may take the same into consideration to decide the bail application within the permitted parameters for the limited purpose. Therefore, in my view, the submissions made by the learned Advocate touching the merits of the case and credibility of the evidence compiled in the charge sheet cannot be accepted.

6. The next important aspects is whether the

accused No. 4 is entitled to claim parity with accused Nos. 2, 3 and 5. Learned Sessions Judge in his detailed order has dealt with this aspect and concluded that accused No. 4 does not deserve parity with accused Nos. 2, 3 and 5. In my view, the learned Judge was right in recording this finding.

7. It is to be noted that the sword and knife, used in the crime, were recovered at the instance of accused No. 4. Similarly, the second sword and knife used in the crime were recovered at the instance of accused No. 1. It is seen on perusal of PM report that the deceased had sustained 25 injuries. Some of the injuries were stab wounds and some of the injuries were incise injuries. It is the case of the prosecution that the four accused brutally assaulted the deceased by swords and knives. He fell unconscious on the spot. He was carried to the hospital by informant/ police constable. The deceased on the way to the hospital disclosed to the constable the names of four assailants and accused No. 4 is one of them. I am conscious of the fact that the bail is a rule and jail is an exception. The question is whether the case before the Court falls in exception or in a rule. In this case, there are 3 to 4 eye witnesses. The accused No. 1

with remaining accused were put to test identification parade. Two eye witnesses have identified the accused No. 4. It is true that one or two witnesses have not identified him. In my view, this could not be the reason to discard his identification by two witnesses, whose statements are recorded by the police.

8. It is seen on perusal of record that the accused persons displayed the brutality of the highest degree. They together mercilessly assaulted the deceased. He succumbed to the injuries. In my view, in a crime, which has been committed with such brutality, the bail cannot be granted as a matter of rule. In such a case instead of taking care of the grievance of the accused in the bail application Court has to see the likely damage to the prosecution and to the society at large. In this case, the Court can see the mind set of the accused. If he is released on bail then he would not only be threat to the witnesses but also to the society at large. Therefore, the apprehension put forth by the learned APP that the possibility of the accused No.4 fleeing from justice and tampering with the prosecution evidence is well founded. In the fact and circumstances, I am not inclined to grant bail to the applicant/accused No.4.

9. The criminal application, therefore, stands **rejected**. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

*Namrata*