

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

Criminal Application (BA) No. 1497 of 2022

[Deorao s/o Mahadeorao Purke ..vs.. State of Maharashtra through PS.O., Hinganghat PS.,
Hinganghat, Wardha]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Sorde, Advocate for the applicant
Mr. N. S. Rao, A.P.P for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 13-4-2023

Deorao Mahadeorao Purke, who is accused 2
in Sessions Trial 28/2021, is seeking bail under
Section 439 of the Code of Criminal Procedure, 1973
(Code).

2. This application is placed before me, since I
heard the earlier application [Criminal Application
(BA) 1192 of 2021] and, since I was not inclined to
grant bail, the learned counsel for the applicant
submitted that the application be dismissed as
withdrawn, and the trial be expedited.

3. It would be relevant to extract paragraphs 4, 5
and 6 of the order of dismissal dated 10-12-2021 in
Criminal Application (BA) 1192 of 2021.

“4. The learned trial Court is requested to frame the charge, if not already framed, within the next thirty days and then to proceed with the trial and complete the same expeditiously.

5. If there is no significant progress in the trial in the next six weeks, the applicants shall be at liberty to renew the prayer for bail before this Court.

6. The liberty is subject to two conditions. The first is that this order shall be brought to the notice of the trial Court by the applicants or their counsel within the next seven days and the second condition is that the delay in trial, shall not be attributable to the accused.”

4. The applicant applied afresh for bail before the learned trial Judge. He contended that there was no progress in the trial, and more importantly, there was no compelling reason why the applicant should languish in custody since 19-5-2021. The learned trial Judge was pleased to reject the application vide order dated 24-3-2022. The learned trial Judge noted that the charge is framed on 30-12-2021. The trial could not progress since the property was not produced. On merits, the trial Court found that the applicant is named in the FIR and that he used

dangerous weapon and the eye witnesses have spoken about his role.

5. In so far as the submission that the trial is delayed, I find considerable substance. While the charge is framed promptly, even according to the learned trial Judge, the trial did not progress since the property was not produced, and the delay, therefore, cannot be attributed to the accused.

6. On the merits of the matter, the case of the prosecution is that informant Piyush Lonare and his friend Amit Raut were proceeding on motorcycle on 18-5-2021 and in front of the house of the accused, accused 3 abused them in filthy language. Accused 1 and 2 came out of their house with *farsa* and axe. Accused 1 assaulted the informant by axe on the hand. The Informant rescued himself and escaped. Accused 1 and 3 caught Amit and then accused 1 and 2 assaulted Amit by battle axe, knife and axe. It is on such broad allegations that offence punishable under Sections 307, 324, 435, 294, 427, 506, 188

read with Section 34 of the Indian Penal Code (IPC) was registered.

7. The applicant has no criminal antecedent. While I do not wish to make any definite observation on the submission of the learned counsel that the injured was discharged after two days of treatment and offence punishable under Section 307 of IPC is not made out, *prima facie*, it does not appear that the assault was premeditated as such. I have perused the statement of informant Amit recorded under Section 161 of the Code. The incident appears to have occurred in view of an altercation on some not very serious issues. Accepting the statement of informant Amit at face value, premeditation as such can safely be *prima facie* excluded.

8. Considering the material on record holistically and particularly, the fact that the applicant is in custody since nearly two years, and he has no previous criminal antecedent to his discredit, I am inclined to grant bail.

9. The application is allowed. I proceed to pass the following order.

(i) The applicant be released from custody on furnishing P.R. Bond of Rs. 50,000/- (Rupees Fifty Thousand) and surety of like amount to the satisfaction of the learned trial Judge.

(ii) The applicant shall not enter the territorial limits of Tahsil Hinganghat, District Wardha till the conclusion of the trial unless required to attend the dates of the hearing/trial or specifically permitted by reasoned order passed by the learned trial Judge, to meet exceptional situations.

(iii) The applicant shall not, directly or indirectly, make any attempt to influence the witnesses.

(iv) The applicant shall furnish the current address and phone number to the concerned police station within forty-eight hours from the release from custody.

(v) The applicant shall attend every date of the trial scrupulously, unless exempted by the trial

Judge, which exemption shall be granted only in extra ordinary and exceptional circumstances.

JUDGE

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