



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

CRIMINAL APPLICATION (BA) NO.1153/2023

Pankaj Suresh Tidke

...Versus...

State of Maharashtra, Through Police Station Officer, Hiwarkhed Police Station
Taluka Khamgaon, District - Buldhana

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

Court's or Judge's orders

Mr. A.D. Bhate, Advocate for applicant
Mrs. K.R. Deshpande, Addl. PP for non-applicant

CORAM : AVINASH G. GHAROTE, J.

DATE : 09/02/2024

1. Heard Mr. Bhate, learned counsel for the applicant and Mrs. Deshpande, learned Additional Public Prosecutor for the non-applicant.
2. The application seeks enlargement of applicant on bail for the offence punishable under Section 302 r/w 34 of Indian Penal Code. The incident is dated 06/06/2021. The applicant has been arrested on the same day.
3. The earlier application for bail bearing Criminal Application (BA) No.1103/2021 has been rejected by me on 05/01/2022. It is not in dispute that the other co-accused have been released on bail. The incident involves an alleged assault by the applicant along with other persons, on the head of the

deceased Ramesh Naribhau Tidke by a hammer.

4. Mr. Bhate, learned counsel for the applicant, however, raises three grounds, which according to him were not pointed out earlier.

5. It is then contended that the recording of the statements, panchanama etc. is all suspect for the reason that the incident has happened at village Atali, Tah. and Distt. Khamgaon. The distance of police station Hiwarkhed from village Atali, is approximately 35 kilometres. It is contended that though the panchanama is claimed to have commenced on 06/06/2021 at 14:30 hours, the information regarding the incident was received by Police Station Hiwarkhed on 06/06/2021 at 14:15 hours and therefore, it was an impossibility for the police party to have travelled the distance of 35 kms. within a period of 15 minutes, find out willing panchas and commence the panchanama at 14:30 hours.

6. The next contention is that though the statement of as many as eight persons were recorded on 06/06/2021, the statement of the alleged eyewitness Smt. Rajkanya Dinesh Tidke was not recorded on that day but came to be recorded only on 12/06/2021 (pg.83). This, according to the learned counsel, clearly makes the statement as well as the involvement of the applicant suspect.

7. It is also contended that though the incident is claimed to have occurred in Gat no.67, the body has been found three fields away, for which the spot panchanama has been relied upon (pg.45), which according to the applicant, also creates a doubt about the happening of the very incident. It is therefore contended that since these circumstances were not brought to the notice of the Court when the earlier bail applications were decided, they need consideration.

8. Though the incident is dated 06/06/2021 and the applicant was arrested on the same day, the delay in the trial, is also raised as one of the grounds for enlarging the applicant on bail, who, as of now has undergone incarceration for more than a period of two years and eight months. It is further contended that any apprehension expressed by the learned Additional Public Prosecutor regarding tampering of the evidence or the threat to the safety of the witnesses can be addressed by imposing suitable conditions.

9. Though delay in trial cannot be a ground to enlarge the accused on bail, however, in the present case, the copy of the diary entry which has been now placed on record for the first time, indicates, that the entry was taken at 14:14 hours of 06/06/2021 regarding the receipt of information of the incident. It is not disputed that the place at which the incident has happened is at a distance of 35 kms. from Police

Station Hiwarkhed. The spot panchanama dated 06/06/2021 indicates that it was commenced at 14:30 hours and was completed at 15:30 hours, which would indicate that it is claimed that the police party travelled from Hiwarkhed to village Akoli Shivar, which is a distance of 35 kms. from Hiwarkhed, within a period of 16 minutes, found the panchas and actually commenced the recording of the spot panchanama within the aforesaid time. Prima facie, this is a factor, which would have to be taken into consideration while considering the application for bail.

10. It is also not in dispute that though the police party recorded the statements of as many as seven persons on 06/06/2021, for some inexplicable reasons, it failed to record the statement of Smt. Rajkanya Dinesh Tidke, the sole eyewitness and the same came to be recorded only on 12/06/2021. That does not appear to be any plausible reason on record, to indicate the delay in recording her statement, though she was very much present in the village on 06/06/2021. This also has a material bearing upon the issue of grant of bail. These observations are prima facie in nature and will not affect the trial.

11. Considering the above position and the delay in prosecution, in my considered opinion, now a case for bail is made out. Hence, the following order.

ORDER

(i) The criminal application is allowed. The applicant – Pankaj Suresh Tidke be released on bail in Crime No.209/2021, registered with Police Station Hiwarkhed, for the offence punishable under Section 302 r/w 34 of Indian Penal Code upon executing PR. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties in the like amount.

(ii) The applicant shall attend the Sessions Court on each and every date and ensure that the trial is not protracted on his count.

(iii) The applicant shall not enter the territorial limits of village Akoli Shivar, till completion of trial.

(iv) The applicant shall not tamper with the prosecution witnesses.

(v) The applicant shall furnish his cellphone number and address with the address proof along with the names of his two relatives and their address proof to Police Station Hiwarkhed and shall keep them updated in case of any change.

(vi) Breach of any of the above conditions will result into cancellation of bail.

(AVINASH G. GHAROTE, J.)