



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

CRIMINAL APPLICATION (APPP) NO.1755/2025

IN

CRIMINAL APPLICATION (ABA) NO.639/2025

(Tanmay S/o Akhilesh Trivedi Vs. State of Maharashtra)

Applicant:- Anup S/o Mahesh Jaiswal

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

Court's or Judge's orders

Mr. A.A. Naik, Senior Advocate a/b. Mr. P.R. Agrawal,
Advocate for the applicant.
Mr. V.A. Thakare, A.P.P for non-applicant/State.
Mr. P.S. Chawhan, Advocate to assist prosecution.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATED: 16.9.2025.

Heard.

2. The application is filed by the applicant Anup S/o Mahesh Jaiswal for grant of permission to assist the prosecution.
3. The bail application is filed by one of the accused namely Tanmay S/o Akhilesh Trivedi.
4. The learned Advocate for the applicant Anup has stated that in the F.I.R. the name of this applicant was mentioned and the crime is registered. Thereafter, in charge-sheet his name was deleted as the conspiracy to implicate him is found during the investigation and according to the applicant, he became victim as per the statement made by co-accused to implicate him in said offence.
5. The applicant has relied on the judgment of the Hon'ble Apex Court in case of *Jagjeet Singh and others V/s. Ashish Mishra alias Monu* and another reported in **(2022) 9 SCC 321**. He has stated that as per Section 3(y) of the Bhartiya Nagarik Suraksha Sanhita, 2023 he is a 'victim' and as per para 19 of above-said judgment, this applicant

Anup has right to assist the prosecution and hence, prayed to allow him to assist the prosecution.

6. Learned Senior Advocate for the applicant Tanmay has opposed the application stating that applicant-Anup is not a victim. He has remedy to file the proceedings for malicious prosecution. The applicant has no right to file an appeal against the acquittal. Therefore, he cannot be heard at the time of deciding the application for bail. The learned Senior Advocate has relied on the observations made in same judgment in case of *Jagjeet Singh and others* (supra) in paragraph No.24.2 which reads as under:-

“24. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

7. Relying on said observations, the learned Senior Advocate has stated that the applicant Anup is not a complainant, the State is the complainant. The statement is made that the M.D. Powder and gun was planted to implicate him in the said offence, the charge-sheet is not filed against him. As he cannot file an appeal against the acquittal, he is not a victim. Hence, prayed to reject the application.

8. Heard the learned Advocates for the parties and perused the record.

9. As per Section 3(y) ‘victim’ is a person who has suffered any loss or injury caused by any act or omission by any person and includes guardian or legal heirs of such victim.

10. The applicant-Anup has stated about his loss as he is the aggrieved person. Section 338(2) of BNSS reads as follows:-

“Section 338(2) - If in any such case any private person instructs his advocate to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the advocate so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.”

11. In this case before granting permission to assist to prosecution, it is necessary to verify whether the applicant comes under the definition of victim. No doubt, co-accused tried to implicate him in the serious offence and crime is registered against him, he has a grievance against this accused-Tanmay, however, he cannot file an appeal against him on his acquittal in this case as per the observations made in case of *Jagjeet Singh and others* (supra) as the applicant-Anup has no right to be heard at the time of deciding bail application.

12. It appears from charge sheet and statement of accused conspiracy was there to implicate the applicant in said crime, however, in said crime he is not the complainant. He has remedy to prosecute the applicant by lodging another complaint but in this case, the applicant cannot be treated as victim.

13. For the aforesaid reasons, the application is rejected.

(MRS. VRUSHALI V. JOSHI, J.)