

S.C. No.128/2020
State Vs. Nitin

Order below Exh.3
(Passed on 25.03.2021)

By way of successive bail application the accused No.1 Nitin @ Chhotu Gowardhan prayed for releasing him on bail for the offence punishable under sections 307, 504 & 506 of IPC r/w Sec. 4/25 of the Arms Act.

Perused the application and say filed by the non-applicant below Exh.3. Heard the learned advocate Shri Hajarey, for the accused No.1 and learned A.P.P. Shri Nagpure for the prosecution. Perused the charge-sheet.

2. The accused No.1 along with co-accused No.2 and 3 facing trial for attempting to commit murder of the injured Anmol Balli. It is alleged by the injured that the accused Nitin along with co-accused assaulted him with sword, stick and kick & fist blows. It is to be noted that the accused Nitin previously applied for bail vide MCA No.753/2020 and after filing of charge-sheet vide MCA No.923/2020. However, this court rejected both the applications on merits.

3. Now it is contention of the learned advocate for the accused Nitin that at the time of deciding both the applications the previous advocate for the accused failed to explain this court that the accused assaulted injured Anmol to save his own life. The learned advocate kept his reliance on the memorandum statement of the accused Nitin and the statement of one Sargam.

4. The learned APP opposed the application on the ground that the offence is of serious nature. The accused approached to the Hon'ble High Court vide Criminal Application (BA) No.1073/2020. However, the application came to be disposed off as withdrawn. Therefore, no change in circumstances made out by the accused. Hence, the application may kindly be rejected.

5. I have gone through the authorities relied by the accused. In the case of **Babusingh and another vs. The State of U.P AIR 1978, S.C. 527**, the Hon'ble Supreme Court held that, *"courts are not barred from second consideration at a later stage by entertaining another application for bail"*.

In the case of **Prabhakar Tewari vs. State of U.P 2020 SAR (Cri.) 323**, the Hon'ble Supreme Court held that, *"the graveness and seriousness of offence and pending of several criminal cases against the accused cannot be the basis for refusal of prayer for bail."*

6. At the outset, I want to mention that the accused can move as many as successive bail application but he has to show the change in circumstances for grant of bail. Here it is contention of the accused Nitin that earlier the ground of self-defence was not raised by his learned advocate. Therefore, it could be considered. I have gone through the statement of Sargam but nowhere I found that the accused in his defence assaulted the injured. So far as statement given by the accused in memorandum statement cannot be looked into at this juncture as it is not a substantive piece of evidence. This court after giving due consideration to submission of the accused and the prosecution previously rejected prayer for bail of the accused. It is to be noted that thereafter, the accused

approached to the Hon'ble High Court. There the accused withdraw the application. Hence, same came to be disposed off. Thus, in my view the applicant failed to make out change in circumstances for allowing his application. The offence is of serious nature and possibility of tampering with prosecution witnesses cannot be ruled out. Hence, the following order.

Order

The application is hereby rejected.

Date : 25.03.2021.

(V. D. Kedar)
Addl. Sessions Judge,
Chandrapur.