

IN THE COURT OF SESSIONS JUDGE, YAVATMAL

(Presided over by Shri K.R.Pethkar)

S.T.No. 49/2019

State -Vs- Kiran & others

Order Below Exh.75

[Passed on this 3rd day of Nov. 2020]

1.. Heard Shri Chamediya, learned Advocate for the applicant/accused No.4 and learned A.P.P. Shri Telang. This is fourth application for regular bail under section 437 of Cr.P.C. in Crime No. 12/2018 registered in City Police Station Yavatmal under section 120-B, 302 r/w 34 of the I.P.C. on the basis of the report lodged by the first informant Anjali Mangulkar.

2.. The applicant/accused No.4 states that the Hon'ble Bombay High Court, Bench at Nagpur has released the accused No.5 Gajanan Kumare by its order dated 28-8-2020 in Criminal Bail Application No. 150/2020. The applicant/accused is entitled for regular bail on the principle of parity. The names of the accused No. 4 and 5 are mentioned in the F.I.R. but the same are not mentioned in the statement of the first informant which is recorded by the learned Magistrate under section 164 of the Cr.P.C. The learned Advocate for the applicant/accused No.4 has prayed that principle of parity may kindly be applied to

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the applicant/accused No.4 and he may kindly be released on regular bail.

3.. The State has given say at Exh.77 stating that there is ample evidence against the applicant/accused No.4 and he is involved in the offence. The applicant/accused No.4 will tamper and pressurize the prosecution witnesses in case he is released on regular bail. The learned A.P.P. submitted that application for regular bail of the applicant/accused No.4 is devoid of merits and same may kindly be rejected.

4.. The Hon'ble Bombay High Court has observed that

“Having heard the learned counsel for the parties and upon perusal of the material on record it becomes evident that the statement of the complainant under section 164 of the Cr.P.C. is totally at variance with the claim made by her in her oral statement leading to registration of FIR, as also her statement recorded under section 161 of Cr.P.C. While in the oral statement and the statement recorded under section 161 of the Cr.P.C., the complainant placed the blame entirely upon the applicant and another accused, in the statement made before the Magistrate under section 164 of the Cr.P.C., the complainant place entire blame for the incident on three other accused persons, while emphatically stating that she heard the names of the applicant and another accused Bhima Khade from the police itself. The aforesaid emphatic statement made by the complainant in her statement recorded under Section 164 of the Cr.P.C. would indicate that she was not aware about the names of the applicant when the incident took place and she came to know about the same for the first time from the police.

The manner in which the complaint has described the

incident in her statement under Section 164 of the Cr.P.C. shows that she has placed the entire blame for the injuries suffered by her husband on three other accused persons, without showing any involvement of the applicant in the incident in question ”

The above observations are squarely applicable to the applicant/accused No.4 while considering his regular bail application. The name of the applicant/accused is mentioned in the F.I.R. but same is not appearing in the statement of the first informant recorded under section 164 of the Cr.P.C. The observations made by the Hon'ble Bombay High Court in bail application are binding on this Court while deciding bail application of the applicant/accused No.4. As such, in my view the applicant/accused No.4 deserves for regular bail on certain conditions. Hence, I proceed to pass the following order.

Order

[A] The application is hereby allowed.

[B] The applicant/accused No.4 Mithun @ Bhima Shivaji Khade, r/o Moha T.D. Yavatmal is directed to be released on bail on furnishing PR bond of Rs. 25000/- and surety in the like amount.

[C] The applicant/accused No.4 shall not enter jurisdiction of police station Yavatmal City during the pendency of the trial.

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[D] The applicant/accused No.4 shall report at Police Station Yavatmal [City] on every first and fourth Monday of each month between 10.00 a.m. to 5.00 p.m. during the pendency of the trial.

[E] The applicant/accused No.4 shall attend the proceeding before this Court on each and every date of the trial.

[F] The applicant/accused No.4 shall not in any manner tamper with the evidence or seek to influence the witnesses.

Dt/3-11-2020

[K.R.Pethkar]
Sessions Judge,
Yavatmal