

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

CRIMINAL WRIT PETITION 393 OF 2021

Shubham @ Bhaiyyalal s/o. Siddi Soni,
aged 22 yrs, Occ. Student,
r/o. House No. 34, Behind Amjadi Masjid,
Mahesh Nagar, Shanti Nagar, Nagpur **PETITIONER**

...VERSUS...

State of Maharashtra,
thr Police Station Officer,
Police Station, Kalamna, Nagpur ...**RESPONDENT**

Mr. R.R. Vyas, counsel for petitioner.
Mr. N.S. Rao, APP for respondent/State.

CORAM: ROHIT B. DEO, J.
DATE : 17.07.2021

ORAL JUDGMENT:

Heard Mr. R.R. Vyas, the learned counsel for the petitioner and Mr. N.S. Rao, the learned APP for respondent/State.

2. The credibility of the justice dispensation system is the collective responsibility of all the stakeholders; the judges, the bar, the litigants and the common man.

3. Unfortunately, the erosion of the faith of the common man in the justice dispensation system, more often

than not, is attributable to stakeholders, who may not be alive to their pious duty and responsibility to ensure that the stream of justice flows unpolluted and unhindered.

4. The disturbing ease with which the applicant secured bail, by gross suppression, nay, chicanery is reminiscent of the words spoken by Marcellus in Hamlet “Something is rotten in the State of Denmark”.

5. Something is indeed wrong with the state of affairs in the justice dispensation system, its credibility is in peril, and the enemy lurks within.

6. The applicant is arraigned as an accused in Crime 37/2020, registered at Police Station, Kalamana, Nagpur, for offences punishable under sections 302, 307, 326, 143, 145, 147, 148, 149, 504, 506, 120-B of Indian Penal Code read with section 135 of Maharashtra Police Act. The applicant and the co-accused allegedly brutally killed Mr. Nikhil Lokhande.

7. The applicant preferred Criminal Application 1088/2020 seeking bail, which was assigned to Mr. S.S. Deshpande, the learned Additional Sessions Judge-8, Nagpur.

8. The learned Sessions Judge rejected the application, after minutely scrutinizing the material in the chargesheet and hearing the learned counsel Mr. Chetan Thakur, who appeared on behalf of the applicant.

9. The order of rejection of bail dated 20.6.2020 notes the uncontroverted position that the applicant is a history-sheeter and is facing as many as six prosecutions involving serious offences. The rejection order further notes that there is overwhelming evidence to link the applicant with the brutal killing and that a weapon is also recovered at the instance of the applicant.

10. The rejection order notes that the adverse antecedents of the applicant justifies the apprehension of the prosecution that the prosecution witnesses may be influenced or pressurized.

11. The learned Judge was further not impressed by the submission canvased by Mr. Chetan Thakur that bail be granted in view of the Covid-19 outbreak.

12. The rejection of bail by the learned Sessions Judge Mr. S.S. Deshpande did not deter the applicant. It appears that two days after the rejection of bail, the assignment changed. The applicant sensed an opportunity and was quick to prefer an application for bail dated 22.6.2020 which was assigned to Smt. V.D. Ingle, Additional Sessions Judge-7, Nagpur.

13. The note appended below the application seeking bail, reads thus:

“This is 2nd bail application filed by the applicant before Sessions Court at Nagpur, on the ground that, there is no prospects of early trial due to COVID-19 apart from merits of present case”.

14. The details of the first application, which was rejected, were not disclosed, much less, the fact that the rejection was on merits and hardly 48 hours had elapsed therefrom, nor was the rejection order placed on record.

15. I do not have even an iota of doubt in my mind, that the note was a machiavellian lip service paid to the solemn duty of true and faithful disclosure of the rejection of the first bail application on merits. Indeed, the note is a manifestation of devious mind and the intent was to subvert the

administration of justice.

16. The applicant succeeded in the nefarious design. The learned Judge Smt. V.D. Ingle was pleased to grant bail by a cryptic order. Perusal of the order dated 24.6.2020 rendered by the learned Smt. V.D. Ingle reveals that she may not have realized that she was considering a successive application preferred 48 hours after the rejection of the first application by the learned Judge Mr. S.S. Deshpande.

17. The learned prosecutor, who appeared in Miscellaneous Criminal Application 1453/2020, which was allowed by the learned Judge Smt. V.D. Ingle, presumably did not draw the attention of the learned Judge Smt. V.D. Ingle to the note appended. While the prosecutor was not alive to her duty, the learned Judge also did not, either consider the deceitful half truth or if she did consider the note, the learned counsel Mr. Chetan Thakur, who also appeared for the applicant in the earlier bail proceeding, was not called upon to produce on record the first rejection order.

18. The first rejection order rendered by the learned

Judge Mr. S.S. Deshpande was not produced on record. In the note appended, the statement made was a mendacious and mischievous half truth. The prosecutor was silent, and the learned Judge failed to hear the alarm bells, which the conveniently and deceptively worded “disclosure” ought to have set ringing.

19. The applicant secured the bail by hoodwinking the system and merrily walked out of the prison a free man. Fortunately, due to the intervention of the complainant, the prosecution was obligated to move an application seeking cancellation of bail.

20. The applicant opposed the application seeking cancellation of bail. However, the applicant did not deny that the copy of the earlier rejection order was not placed on record.

21. The learned Judge Smt. V.D. Ingle cancelled the bail vide order dated 29.8.2020, observing thus:

“9) After perusing the present application and considering the argument of Ld. APP, it appears that Ld. APP has no knowledge about rejection of earlier bail application of non-applicant/accused. She herself argued that APP before District Court-8 and before this court

was not the same and therefore the aforesaid fact could not be ascertained during the pandemic COVID-19. Though the Ld. APP and Ld. Counsel for non-applicant argued the matter simultaneously and it is the contention of Ld. Counsel for non-applicant that he pointed out the attention of the Court about rejection of his earlier bail application, then the Ld. APP must have argued in that respect but she did not argue on that point because she herself has no knowledge about it. Hence, the contention of Ld. counsel for non-applicant/accused in that respect cannot be accepted which shows suppression of material fact. It also appeared that the Ld. Counsel for non-applicant has also not filed copy of rejection of bail order on record”.

22. Unfazed and undeterred, the applicant is before me questioning the order of cancellation of bail.

23. The applicant did not surrender to custody despite the direction issued by the learned Sessions Judge and absconded. I, therefore, directed the applicant, vide order dated 14.6.2021 to surrender to custody within 24 hours. The applicant has accordingly surrendered.

24. The learned counsel for the applicant Mr. R.R. Vyas canvassed an ingenious argument. Mr. R.R. Vyas argued that strict rules of pleadings are not applicable to bail application and the degree of disclosure is not absolute. The argument is

noted only as a courtesy to Mr. R.R. Vyas. The duty is to make a true and faithful disclosure, and not a half truth with the intent of subverting the administration of justice. Not only the applicant, the learned counsel, who appeared in both the bail proceedings, must share the blame for the attempt to take the judicial process for a ride.

25. This application is absolutely frivolous and is liable to be dismissed with exemplary costs.

26. The application is dismissed with cost of Rs. 50,000/- (Rupees Fifty Thousand) which shall be deposited with the High Court Legal Aid Sub-Committee, Nagpur, within the next 15 days, and in default, the costs shall be recovered by the Collector, Nagpur, as arrears of land revenue.

27. Before parting with the order, I am impelled to record, that I did consider taking an extremely stern and serious view of the role played by the learned counsel who appeared on behalf of the applicant in both the bail applications. However, since the learned counsel has filed on record an affidavit, tendering unconditional apology, and

assuring, that henceforth he will disclose all material facts, I am refraining from initiating further action in the fond hope that the unsavoury incident would only be an aberration.

28. The learned counsel would do well to be guided by the following observations of the Hon'ble Supreme Court in ***R.Muthukrishnan Vs. The Registrar General of High Court at Madras, AIR 2019 SC 849.***

“27. It is said by Alexander Cockburn that “the weapon of the advocate is the sword of a soldier, not the dagger of the assassin”. It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honest, dedication and hard work is the only source towards perfection. An advocate’s conduct is supposed to be exemplary. In case an advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped of”.

Judge

Belkhede