

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

Criminal Application (BA) No.53/2015
Sunil s/o Laxmanrao Zape Vs. State of Maharashtra

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

Court's or Judge's
Orders.

Shri J. B. Kasat, Advocate for the applicant.
Shri Bhoyar, APP for the non-applicant/State.

CORAM : PRASANNA B.VARALE, J.
DATE : FEBRUARY 24, 2015.

Heard Shri Kasat, the learned Advocate for the applicant.

The applicant is seeking his enlargement on bail in connection with
Crime No.120/2014 registered at Chandur Rly. Police Station, District Amravati for
the offence punishable under Section 307 read with Section 34 of the I.P. Code

The story of the assault is reflected in the report lodged at the instance of One Yogesh Wankhede, the Manager of Aditya Bar/Restaurant. On 13.07.2014 the informant-complainant Yogesh attended his duties in the restaurant and the owner Mr. Nandu Gawande was also attending the counter. At the closing hours i.e. 10.30 p.m. Yogesh and the owner Nandu were on their way to return. The owner was approaching to his motor-cycle. By that time, four persons reached the spot and gave blows by knife and an iron rod. Yogesh identified one Pappu Yadav and stated that the other three persons were unknown to him. By seeking assistance, a vehicle was arranged and seeking assistance from one Kanhaiya, the vehicle was arranged and the victim was shifted to Jajoo hospital initially and thereafter

referred to Irwin Hospital, Amravati. The report was accordingly lodged in the early hours of 14.7.2014 i.e.. by 6.35 hours. The learned counsel Shri Kasat vehemently submits that the report refers to three unknown persons by the complainant-informant. He submits that a general allegation is made in the report that these three persons were carrying knife and iron rod and gave blows. Shri Kasat submits that the investigation is now complete and concluded in filing charge-sheet. The material collected by the Investigating Agency against the applicant is only an ambiguous statement of the informant-complainant and an alleged dying declaration recorded by the Agency of the victim. Shri Kasat submits that the recovery of the sharp edged weapon alleged to be used in the assault is at the instance of another accused Mr. Chaware. He submits that the applicant was arrested on 14.7.2014 and since then he is behind bars. Shri Kasat further submits that the material collected by the Investigating Agency, though assuming that it connects the applicant and not admitting the same, it hardly reflects the presence of the applicant and nothing more than that. Shri Kasat submits that no role is played by the applicant and as the investigation is now complete and concluded in filing the charge-sheet, there is no reason to keep the applicant behind the bars for further indefinite period on the basis of such insufficient material against him.

The learned APP vehemently opposes the application. The learned APP submits that the statements of the eye witnesses are recorded by the Investigating Agency. He submits that in the identification parade carried out the witnesses identified the applicant and other two accused. The learned APP made available the material collected by the Investigating Agency.

Perusal of the material show that a statement of witness Ravi Ingale was recorded who is frequent visitor to the restaurant. This witness gives an account of a petty quarrel, an account of failure to supply of the demanded dish for the dinner by Pappu Yadav and his friends. He states that Pappu and his friends then left the restaurant. Then he states that he left the restaurant and at that time Pappu Yadav and his three friends were standing in front of the restaurant. He further states that he received a phone-call on reaching at his residence informing that Nandu is shifted at Jajoo Hospital. Then he states about shifting Nandu to Amravati. Thus, this witness is not an eye witness to the incident. Supplementary statement of Yogesh is recorded. In this statement, Yogesh states that, out of three unknown persons, one gave kick to the motorcycle of Nandi; the another unknown person gave a knife blow causing an injury in the abdomen and the third unknown person then gave blows by iron rod. He further states that Pappu then gave knife blow. The statement of the victim Naresh @ Nandu is recorded on 3rd August, 2014. He gives similar version as of Yogesh and also some account of previous enmity with Pappu Yadav.

The learned APP also invited my attention to the statement referred as dying declaration recorded at Rahate Hospital, Nagpur. In this statement, the victim states that Pappu reached the spot with three unknown persons. One unknown person gave kick to his two wheelers vehicle. Another unknown person who was carrying knife gave a blow causing injury and blood oozed out. The third unknown person gave blow on the head with iron rod. Then he states that Pappu also gave knife blow. The material collected by the Investigating Agency refers to recovery of knife at the instance of other accused one Mr. Suraj Chaware. Perusal of the

medical certificates collected by the Investigating Agency show that the victim received two stab injuries even the admission certificate at Jajoo hospital dated 30.7.2014 refers to stab wound. Thus, considering the material what reveals is the attribution to the one of the accused, an unknown person, giving the knife blow and one unknown accused person giving a blow by iron rod. The knife is recovered at the instance of other accused. There is no reference to any injury caused by hard and blunt object. Thus, considering the material, I find merit in the submission of the learned counsel Shri Kasat for the applicant that the material, at the most, refers the presence of the applicant and an ill-founded allegation of assault of iron rod which is not supported by the medical document.

Considering the material produced on record, I am of the opinion that the learned counsel for the applicant has made out a case. The apprehension of the State can be taken care of by imposing conditions on the applicant. The application is allowed.

The applicant be released on bail in Crime No.120/2014 under Section 307 read with Section 34 of the Indian Penal Code registered with Police Station, Chandur Rly, District Amravati on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five thousand only) with one solvent surety in like amount on following conditions :

- a] The applicant shall attend Police Station, Frezarpura, Amravati on every 2nd and 4th Sunday of

every month between 9.00 am to 12.00 noon.

- b] The applicant shall maintain a diary of his attendance duly countersigned by the Investigating Officer/P.S.O.
- c] He shall not tamper with the prosecution witnesses/evidence and shall not cause any obstruction in the investigation of the offence.
- d] He shall not indulge in any other crime of similar nature.
- e] The applicant should not leave the jurisdiction of the trial Court without its prior permission.

In case of breach of the conditions, the prosecution agency to take necessary steps in accordance with the provisions of law.

JUDGE

Ambulkar