

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

Criminal Application [BA] No.117 of 2015

(Kailash Baban Dhatkar vs. The State of Maharashtra, through P.S.O. Ralegaon, District Yavatmal)

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

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Court's or Judge's Orders

Mr. R.M. Daga, Advocate for the Applicant.
Mr. M.J. Khan, A.P.P. for the Non-Applciant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 23, 2015.

Heard Mr. R.M. Daga, the learned Counsel for the applicant.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.78/2014, registered at Police Station Ralegaon, District Yavatmal for the offences punishable under Sections 302 and 114 read with Section 34 of the Indian Penal Code.

This is a peculiar case of it's time. The informant/complainant himself is accused no.1 and the applicant before this Court. He states in his report that he was working as a Manager in Amrut Bar since last two years. On 10/07/2014, victim-Ganesh entered in the Bar, consumed liquor and took dinner. Since the bill was to the tune of Rs.1,030/-, Ganesh approached the applicant-Kailash, who was on counter, and informed him that he is unable to pay the bill

as he is not having the money with him. Kailash insisted him for the amount. Ganesh took out knife and started giving blows to the applicant-Kailash. The applicant made an attempt to save himself. Ganesh started giving blows on the table resulting in breaking glass of the counter table. The applicant snatched knife from Ganesh and gave a blow, then Ganesh took out a beer bottle and that was also then snatched by the applicant and gave a blow in the abdomen of Ganesh and thereafter the applicant gave successive blows to Ganesh. The victim fell down lying in pool of blood. The other persons i.e. the staff members in the Bar, namely, Santosh Raut, Ankush Gedam and Harish Shirole also took up the victim and dropped him outside the Bar. As there was no vehicle available, he was lying on the spot for quite some time and breath last. Then the applicant-Kailash lodged the report to the Police Station.

The learned Counsel Mr. Daga for the applicant submits that though the applicant approached the learned Sessions Judge, the learned Sessions Judge rejected the application only on the count that the applicant himself gave information to the police that he assaulted Ganesh with knife and with broken beer bottle. Mr. Daga then submits that the investigation is concluded in filing charge-sheet and the statements of witnesses recorded by the investigating agency show that these are not the eye witnesses to the incident. Mr.

Daga also submits that there is no other material except the report lodged at the instance of the applicant himself. Mr. Daga then submits that on the basis of similar circumstances, this Court allowed the bail application. He further submits that as this Court as well as the Hon'ble the Apex Court time and again observed that the report lodged by the accused is admissible only for a limited extent for proving the fact of giving information by the accused himself as evidence of his conduct under Section 8 of the Evidence Act. This material cannot be used against the applicant right from a consistent view taken by the High Court and the Apex Court since 1966 in the matter of *Aghnoo Nagesia vs. State of Bihar*, reported in *AIR 1966 SC 119*.

Mr. M.J. Khan, the learned A.P.P. opposes the application. The learned A.P.P. submits that the brutal murder was committed of the victim, who had received as many as 24 injuries on his person. The learned A.P.P. also made available the material collected by the investigating agency.

I have gone through the material collected by the investigating agency. Apart from the report lodged at the instance of the applicant, the statements recorded by the investigating agency include the statement of accused person and the other independent witnesses. The statements reveal that they are not the eye-witnesses to the incident and,

therefore, they reached subsequent to the incident or they are the relatives, whose statements are recorded after they received the information of death. The statement of one of the employees seems to be a daily wager employee of the restaurant bar viz. Charan shows that though he was on duty on 10/07/2014, in the evening at 07:00 p.m., he left the restaurant bar for purchasing meat (Mutton) and on his return, he found the victim lying near the counter. Then he states that the victim was carried by the applicant and the other accused and was dropped near the gate of restaurant bar. Thus even this witness is not an eye-witness of the incident, but reached on the spot subsequent to the incident.

Learned Counsel Mr. Daga for the applicant has placed heavy reliance on the judgment of this Court in the matter of Mohammad Asgar s/o Abdul Jabbar Ansari reported in 2004 ALL MR (Cri) 646. He was right in submitting that the circumstances against that applicant were of somewhat identical nature with the present applicant. In the case of Mohd. Asgar, the allegation was Mohd. Asgar murdered his wife Khurishida Begum and lodged the report. The learned Additional Sessions Judge rejected the application only on the ground that the applicant himself lodged the report of incident to the police and admitted his guilt. There was also no other material against the applicant apart from the

report lodged at his instance and though the application was opposed by the learned A.P.P. on the ground that the applicant hails from another State i.e. State of Zarkhand, this Court on considering the material, as above referred, allowed the application for seeking enlargement of the applicant on bail.

Considering all these aspects, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail. The apprehension of the State can be taken care of by imposing certain conditions on the applicant.

In the result, the application is allowed. The applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two solvent sureties in the like amount on the following conditions.

- i. The applicant to attend Police Station Ralegaon, District Yavatmal on every Sunday of the month between 09:00 a.m. to 12:00 p.m. and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer, till commencement of the trial.
- ii. The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.

- iii. The applicant to submit his residential address and contact numbers, such as phone/mobiles numbers, to the investigating agency.
- iv. In case the applicant is moving out of the area of Police Station Ralegaon, District Yavatmal, he shall take permission and inform the concerned Police Station about his visit to other place.

In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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