

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

Criminal Application (BA) No. 395 of 2015

(Vinod s/o Govindrao Kokate Vs. The State of Mah. through P.S.O., P.S.
Koradi, Dist. Nagpur)

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

Court's or Judge's order

Shri C. R. Thakur, Advocate for the applicant
Shri A. K. Bangadkar, APP for the State/non-applicant

CORAM : P. B. VARALE, J.

DATE : 22-7-2015.

Heard learned counsel Shri Thakur for the applicant and learned APP Shri Bangadkar for the State.

By the present application, the applicant is seeking his enlargement on bail in connection with Crime No. 218/2014 registered at Police Station Koradi, Nagpur for the offences punishable under Sections 302, 326, 294, 506-B, 143, 147, 149 of the Indian Penal Code and Section 135 of the Bombay Police Act.

The report was lodged initially at the instance of the victim Shaikh Ishtiaq Shaikh Habib at Police Station, Koradi, Nagpur. The incident took place on 24-10-2014 at about 10.30 in the night. The victim and his friend Adil had been to pan shop, one Prashant and Vinod reached there. On account of focusing torch light on the face of the victim, a quarrel took place. Vinod i.e. applicant gave abuses to the victim and pushed him to the floor. Meantime,

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Prashant called down his associates/friends. The younger brother of Prashant, Vikesh reached the spot who armed with an iron rod. Vikesh gave blow of iron rod in the abdomen of the victim, at that time, the applicant was armed with wooden rafter. The victim was subjected to assault by these accused/assailants though his friend Adil intervened, he was not successful in saving the victim from the assault. Victim was then carried to Police Station and the police personnel at the Police Station shifted him to the Hospital.

Learned counsel Shri Thakur for the applicant submitted that on the basis of the report, the applicant was arrested on 27-10-2014 and since then, he is behind the bars. He further submits that though the investigating agency in process of investigation on lodgment of the report collected the material in the form of the statements of witnesses and the other material, except the presence of the applicant and the allegation that the applicant was armed with wooden rafter, there is no material to show that the applicant played any active role in the assault on the victim. He submits that initially, the crime was registered for the offences punishable under Sections 326, 294, 506-B, 143, 147 and 149 of the Indian Penal Code, subsequently, on the death of the victim, Section 302 of the Indian Penal Code was added. Learned counsel Shri Thakur submits that looking to the material collected by the investigating agency, from any angle what reveals is the active role

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played by Vikesh, who was armed with iron rod/crowbar and gave blow to the vital part of the body of the victim i.e. abdomen. His submission is the material collected by the investigating agency reflects that it is only mere presence of the applicant and the allegation that he was armed with wooden rafter and the fact that the applicant had not used that wooden rafter makes the applicant entitle for the protection in the nature of enlargement of bail. He submits that the applicant is earning his livelihood by tailoring job.

Learned APP opposes the application.

I have gone through the material placed on record as well as the case papers made available by the learned APP for my perusal. Perusal of the report as well as the important statement of the eye witness i.e. the friend of the victim Adil, it reveals that role of the applicant is being present on the spot and focusing the torch light. Though the victim and the eye witness, Adil state that the applicant was carrying a wooden rafter, neither the victim nor the eye witness Adil states that the applicant used that wooden rafter. Perusal of the post mortem report shows that the major injuries referred in the report are stab wound and puncture wound in the abdomen further there is a reference of abrasion over front of the middle of left leg. Considering this material, in my opinion, there is a merit in the submissions of learned counsel Shri Thakur that this material is not sufficient enough to say that the applicant was the

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lead player or the person who was aggressor of the act or the applicant caused any damage to the victim. The material show that it was the other accused, Vikesh who was armed with iron rod/crowbar gave fatal blow on the vital part of the body of the victim. It is also not in dispute that the applicant is behind the bars since 27-10-2014. All the necessary material in the process of investigation is collected by the investigating agency. There is nothing to be recovered at the instance of the applicant nor there is anything on the record to show that the applicant may not be available either for the investigating agency or in the process of trial. 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 conditions. In the result, the application is allowed.

The applicant be released on bail on furnishing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount, on the following conditions.

a] The applicant to cooperate with the investigating agency and to attend the Police Station, Koradi, District Nagpur on 2nd and 4th Sunday between 9.00 a.m. to 12.00 noon and to maintain diary of his attendance duly countersigned by the Police Station Officer till conclusion of the trial.

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b] The applicant shall not tamper with the prosecution evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.

c] The applicant to submit his residential address and his contact numbers such as phone/mobile numbers to the investigating agency.

d] In case the applicant is moving out of the area of Police Station, Koradi, he shall inform the concerned Police Station about his visit to other place.

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

JUDGE

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