

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [BA] No.480 of 2015
[Pratik son of Habnsraj Patil Vs. State of Mah.]
AND
Criminal Application [BA] No.696 of 2015
[Suraj son of Lendas Bhowate Vs. State of Mah.]

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

Court's or Judge's orders

Criminal Appln. [BA] No. 480/2015 :

Mr. R.M. Patwardhan, Adv., for the Applicant.
Mr. Bhoyar, APP for respondent.

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Criminal Appln. [BA] No. 696/2015 :

Mr. A.C. Jaltare, Adv., for the Applicant.
Mr. Bhoyar, APP for respondent.

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CORAM : V.M. DESHPANDE, J.

DATE : 08th October, 2015.

01. These two applications are for bail and they can conveniently be disposed of by this common order, since both arise out of Crime No. 223/14 registered with Police Station, Kalamna, Nagpur, for the offence punishable under Section 302 read with Section 34 of Indian Penal Code.

02. Heard Mr. R.M. Patwardhan, learned counsel for the applicant in Criminal Application No. 480 of 2015, and learned Adv. Mr. A.C. Jaltare for the applicant, in Criminal Application No.696 of 2015.

03. Both these two applications are vehemently opposed by learned APP Mr. Bhoyar for the respondent-State.

04. I have also heard independently *in extenso* learned Adv. Mr. T.W. Larokar for the first informant.

05. In the present case, the investigation is over and charge-sheet is already filed in the Court of Law.

06. The deceased is one Akash Patil. The First Information Report is lodged by Smt. Vandana, who is the mother of the deceased. It is not in dispute that the present applicant - Pratik in Criminal Application No. 480 of 2015 is the cousin of deceased Akash. Purva is the sister of applicant - Pratik. It is gathered from the charge-sheet that a marriage between Akash and Purva took place stealthily, which was not approved by the family of deceased Akash and the First Information Report recites that a decision was taken by the first informant for obtaining a divorce.

07. According to First Information Report, the said decision of divorce was taken by the family of deceased on 13th July, 2014 and on the very same day at 11.00

O'clock in the night, the present applicants along with co-accused Swapnil entered the house of the first informant at 11.00 O'clock and they first picked up a quarrel, used abusive language and thereafter started beating the deceased by fist blows. Thereafter, they went outside the house, brought Bamboo sticks and assaulted the deceased. Thereafter, the accused persons themselves put the deceased in an auto rickshaw and took him to Suretech Hospital, Dhantoli, for treatment. During treatment, on 15th July, 2014 at 7.00 O'clock, he died.

08. According to the prosecution case, there are six eye-witnesses. They are [1] Smt. Vandana, the first informant, [2] Smt. Chandrakalabai, the mother of the first informant, [3] Smt. Rekha, sister of Vandana, [4] Prabhakar, [5] Vijay, and [6] Gopal. The last three persons are the residents of the same locality.

09. Nothing is recovered at the instance of the present applicants, since broken Bamboo sticks were seized from the spot itself.

10. In so far as the statements of Prabhakar, Vijay and Gopal are concerned, though they have claimed to have seen the actual incident, much importance cannot be attached to their statements at this stage, firstly because even according to the first informant, the incident took place inside the house of the first informant and these persons were not present in the

house and they are the residents of the locality alone, and secondly there is a considerable delay in recording their police statements.

11. In so far as the statement of Rekha is concerned, according to the prosecution, she is the sister of Vandana, the first informant. The First Information Report as well as her supplementary statement coupled with the statement of Chandrakalabai, the mother of Vandanabai, do not disclose presence of Rekha in the house of the first informant. Rekhabai is a married woman. Normally, her presence would be in her matrimonial house. Her statement shows that she is a resident of the some different locality. Her statement would reveal that when she was in her house at Anmol Nagar, Wathoda, at 11.00 O'clock, she received a cell phone call from Chandrakalabai, who called her at the place. Chandrakalabai does not claim in her statement that she made a phone call to Rekhabai. In that view of the matter, the presence of Rekhabai at the spot, as claimed by her, itself is doubtful, at least prima facie.

12. In the present case, even according to the First Information Report, deceased was taken to the hospital by the present applicants. He was admitted there. The charge-sheets shows the Certificate from Suretech Hospital, whereat he was admitted and he succumbed to injuries. The said Certificate shows that the history was given to the hospital authorities that some unknown persons made an assault on the deceased. Further,

even according to the charge-sheet, the statement of Vandanabai is recorded at Suretech Hospital on 14th July, 2014. The said statement speaks about the assault made by present applicants. The reading of the said statement clearly discloses commission of a cognizable offence. In spite of that, for the reasons best known to the Investigating Officer, he did not record the First Information Report on 14th July, 2014 and it was recorded only on 15th July, 2014 when the first informant Vandana approached the Police. That creates a doubt as to really whether the statement of Vandana was recorded on 14th July, 2014 at Suretech Hospital. Had such statement been recorded, the Investigating Officer would not have missed to record the First Information Report on the very same day. In that view of the matter, the certificate given by the hospital authorities showing that the history is recorded in the hospital record that the deceased was assaulted by unknown persons assumes importance.

13. The investigation is already over. Charge-sheet is already filed. Therefore, on the aforesaid evaluation of the prosecution case, prima facie, this Court is of the view that the applicants are entitled to be released on bail. That leads me to pass the following order:-

ORDER

[a] Criminal Application [BA] Nos. 480 and 696 both 2015 are allowed.

- [b]** The applicant - Pratik Hansraj Patil in Criminal Application No. 480 of 2015 and the Applicant - Suraj Lendas Bhowate in Criminal Application No. 696 of 2015 be released on bail on their executing a personal bond of Rs. 50,000/- [rupees fifty thousand only] each with two solvent sureties each in the like amount in respect of Crime No. 223/2015 registered with Police Station, Kalamna, Nagpur, for offence punishable under Sections 302 read with Section 34 of Indian Penal Code.
- [c]** That the applicants shall attend Police Station Kalamna, Nagpur, once in a week, i.e., on every Sunday between 3.00 p.m., and 5.00 p.m., till the culmination of trial.
- [d]** The applicants shall not enter the territorial jurisdiction of Bhawaninagar, Punapur Road, near Ganesh Temple, Kalamna, Nagpur.
- [e]** That the applicants shall not extend any nature of threat to any of the witnesses, nor shall they indulge in pressurizing tactics. If such is noticed by the Investigating Officer, it shall be open for the Investigating Officer to file an

application for cancellation of bail with the appropriate data.

With this, both the applications are allowed and disposed of.

Judge

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