

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

CRIMINAL APPLICATION (BA) NO.545/2015

tirandas s/o Ramrao Pakhre ..vs.. State of Maharashtra, thr. PSO P.S. Dahihanda,
Tq. Akot, Dist. Akola

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

Court's or Judge's orders.

Mr. R. M. Daga, Advocate for applicant.
Mr. A. D. Sonak, A.P.P. for non applicant-State

CORAM : V. M. DESHPANDE, J.
DATE : SEPTEMBER 16, 2015.

This is an application under Section 439 of Cr. P. C. for grant of bail. The applicant is arrested in Crime No.104/2014 registered with Police Station Dahihanda, Dist.Akola for an offence punishable under Sections 302, 147, 148, 149 of the Indian Penal Code.

Heard Mr. Daga, learned counsel for the applicant and Mr. Sonak, learned A.P.P. for non applicant-State. The Investigating Officer has already completed entire investigation and charge-sheet is already filed.

The deceased is one Sandeep Pakhre. The FIR is lodged by his brother Devanand. The date of incident is 07.11.2014 and on the very same day, the FIR is lodged.

From the FIR, it could be seen that there was a long standing dispute in between the deceased and the accused persons including the present

applicant in respect of the applicant's residence in Buddha Vihar along with his family.

The prosecution further proceeds that on the date of incident, he came to village from Chohota at 6'O clock in the evening. The present applicant was chit chatting with the first informant. That time, the applicant received phone call from co-accused Premdas Pakhre. As per the FIR, Premdas called the applicant along with vehicle since Premdas disclosed his intention of finishing Sandeep. The FIR further proceeds that thereafter the present applicant with other co-accused persons left the said place in a vehicle of Matadoor make. After 15 minutes, the first informant followed the said Matadoor on foot. That time he noticed that other co-accused Najukrao returned to the village and they were armed with deadly weapons. The first informant continued his tractor towards the same direction to notice that the applicant Tirandas was driving the vehicle bearing no.MH-30/L-2827 towards Chohota road and the motorcycle on of his brother Sandeep was parked along side road and Sandeep was seen in dead condition. Therefore, the FIR states that all the co-accused including the present applicant, due to old rivalry between them with the deceased, has committed his murder.

After three days of the recording of the FIR, statement of one Sahebrao Raibole is recorded by the Investigating Officer under Section 161 of the Cr. P.C. This prosecution witness is maternal uncle of the first informant as well as the deceased. According to this prosecution witness, he has witnessed the occurrence of assault by the accused persons. According to him, other accused persons assaulted Sandeep by deadly weapons, which they were holding at the relevant time and after Sandeep fell down on the ground, the present applicant crushed his head by taking the vehicle on his body.

The FIR does not disclose that the informant who reached to the spot was having any conversation with this prosecution witness. Even granting the space in favour of the prosecution that after the incident, Sahebrao must have left the place and, therefore, there was no occasion for the first informant to locate him at the spot but at the same time, we cannot forget that the prosecution witness is a close relative of both; the deceased as well as the first informant. Therefore, it would have been the most natural on his part to disclose the said occurrence to the first informant subsequently.

Further, the charge-sheet shows that the vehicle is not owned by the present applicant, but this is owned by one Sanjay Chaudahri. Interestingly,

the Investigating Officer has not recorded statement of this owner to show that either the present applicant was in his employment as driver or on the date of incident, for one reason or the other he has handed over the custody of the said vehicle to the present applicant. Therefore, prima facie, the whether the applicant was on driving seat or not will be a moot question. Even in the charge-sheet the occupation of the present applicant is not shown by the Investigating Officer as driver.

Further all other accused persons, who according to the prosecution witness-Sahebrao, assaulted on the deceased, are already released on bail by the Court below.

Looking to the aforesaid aspects, as discussed in the preceding paragraphs and in view of the fact that the charge-sheet is already filed, further custodial presence of the present applicant is not required. That leads me to pass the following order.

ORDER

(i) Criminal Application No.545/2015 is allowed.

(ii) Applicant-Tirandas s/o Ramrao Pakhre, be released on bail in connection with Crime No.104/2014 registered with Police Station Dahihanda, Dist. Akola for an offence punishable under Section 302, 147, 148, 149 of the IPC on he

executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) Bail before trial Court.

(iv) The applicant shall attend Police Station, Dahihanda, Dist. Akola once in fortnight till culmination of the trial.

(v) All the observations made in this order are prima facie in nature and are made for deciding the present application only. The learned Judge, who is seisin of the of the trial, shall not get influenced with the above observations.

JUDGE

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