

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

CRIMINAL APPLICATION (BA) NO.652 OF 2015

Shubham S/o Ramuji Hinganeekar

..VS..

State of Mah., thr PSO, PS Nandanwan, Nagpur

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

Court's or Judge's Order

Shri A.K. Bhangde, counsel for the applicant.
Shri A.K. Bangadkar, APP for the State.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 5, 2015.

1. By the present application under Section 439 of the Code of Criminal Procedure, the applicant is seeking his release on bail since the applicant is arrested on 20.3.2015 in connection with Crime No.89 of 2015 registered with Police Station Nandanwan, District Nagpur for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Heard learned counsel for the applicant and learned Additional Public Prosecutor for the non-

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applicant/State.

3. From the charge-sheet, which is placed on record, it appears that there is no eyewitness in the prosecution case. The FIR is lodged by Police Sub Inspector Shri Rajeshwar Pundlikrao Raut. The said officer was discharging his duties at Police Station Nandanwan, Nagpur as a night officer from 19.3.2015 to 20.3.2015 till 09:30 am. While Police Sub Inspector Shri Rajeshwar Pundlikrao Raut was discharging his duties on 20.3.2015, he received a phone call from police constable Shri Pohawa Korpe whereby it was informed to the first informant that a person is lying in a serious condition near Nandanwan N.I.T. complex, at Hanuman temple premises. On getting such information, the first informant along with other police staff immediately rushed to the spot of the incident. The first informant noticed that the person, in respect of whom the information is received, is already dead having injuries on his head which are caused because of the stones.

4. On being inquired about identification of

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dead person by the first informant, one Jamil Shaikh Bashir Shaikh, a resident of N.I.T. complex, Nandanwan, Nagpur identified the said dead person as Piyush Ravirao Tembhekar.

5. The incriminating circumstances, which are pressed into service against the present applicant by the prosecution, are as under:-

i) recovery of mobile phone purportedly owned by deceased having blood stains;

ii) blood stains on the clothes of the present applicant; and

iii) CDR report showing present applicant was in contact with the deceased.

Insofar as recovery of mobile phone is concerned, the said recovery is not made on any memorandum statement of the present applicant. The arrest punchnama of the present applicant shows that at the time of arrest, the police authorities found the

said mobile phone in his possession and according to the prosecution at that time the present applicant made a statement that mobile phone was belonging to the deceased.

Thus, it is clear that after the arrest of the present applicant, the said statement was made by the applicant. Thus, the statement made by the accused is a statement to the police, is not admissible in the eyes of law. Therefore, importance cannot be attached to such recovery of mobile phone.

Insofar as blood stains on the clothes of the present applicant is concerned, according to the prosecution, the incident had occurred in the intervening night of 19.3.2015 and 20.3.2015. The seizure memo, which is filed on record, is dated 20.3.2015 which shows that the proceedings of seizure were started on 20.3.2015 from 20:10 hrs to 21:55 hrs. Thus, after about more than 12 hours of the incident, the clothes of the present applicant were seized. According to the prosecution, at the time of seizure, those clothes were on the person of the present applicant. *Prima facie*, a doubt is created since no prudent man would allow himself to continue with

wearing clothes having blood stains over it for such long period.

Insofar as CDR reports are concerned, learned Additional Public Prosecutor fairly submits that location is not mentioned.

6. These are the only accusations made against the present applicant.

7. Looking to the fact that there is no eyewitness in the prosecution case and the entire case of the prosecution is based on circumstantial evidence so also looking to the aforesaid nature of the circumstances which are pressed into service, this Court is of the view that the present applicant has carved out a case in his favour for grant of bail. Hence, I proceed to pass the following order :-

ORDER

1] The criminal application is allowed.

2] Applicant – Shubham S/o Ramuji Hinganekar be released on bail in

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connection with Crime No.89 of 2015 registered with Police Station Nandanwan, District Nagpur for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code on his executing Personal Bond of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties in the like amount.

3] The applicant shall attend the concerned police station once a week and preferably on every Sunday between 2:00 pm and 5:00 pm, till the charge is framed.

4] After framing of the charge, the applicant shall abide by further conditions imposed upon him by the Trial Court.

5] The applicant is prohibited from extending any threat whatsoever in the nature to the witnesses.

6] Breach of the conditions will give rise

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cause to the prosecution to apply for
cancellation of bail.

7] Bail before the Trial Court.

The criminal application is disposed in aforesaid terms.

JUDGE

!! BRW !!

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