

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

Criminal Application [BA] No.741 of 2015

(Subham @ Dubi s/o Babarao Wanjare

vs.

The State of Maharashtra, through P.S.O. Wadgaon Road, Yeotmal)

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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. S.A. Malani, Advocate for the Applicant.

Mr. A.K. Laddhad, A.P.P. for the Non-Applicant/State.

CORAM : V.M. DESHPANDE, J.

DATE : OCTOBER 20, 2015.

By the present application, the applicant is seeking his enlargement on bail since he is arrested in connection with Crime No.52/2015, registered with Police Station Wadgaon Road, Yeotmal for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code.

After hearing the learned Counsel for the applicant as well as the learned Additional Public Prosecutor for the State, it is clear that the Investigating Officer has completed his entire investigation and the charge-sheet is already filed.

The F.I.R. is lodged by Lalitabai, the mother of deceased Parya alias Pravin. The report is lodged against the unknown persons.

The material, which according to the prosecution against the present applicant, is as under :

[1] Statement of Mala Sontakke, the eye-witness and

[2] Extra judicial confession made by the present applicant to Guddu Ramteke and Akshay Meshram.

Insofar as eye-witness Mala is concerned, her statement is recorded on 27/02/2015. The incident in question is of 24/02/2015. Her statement recorded by the Investigating Officer during the course of the investigation would reveal that she has witnessed the assault on one unknown person, who was sleeping on a bench, by three unknown persons. From the said statement, it is clear that this eye-witness of the prosecution was not knowing either the deceased or any of the assailants. Though she has claimed in her statement that she has seen the assault by three unknown persons, for the reasons best known to Investigating Officer, the Investigating Officer during the course of investigation has not conducted the test identification parade. Further the police has disclosed the name of the present applicant along with other co-accused as assailants, as claimed in her statement recorded under Section 161 of the Code of Criminal Procedure.

In that view of the matter, *prima facie* while considering the application for bail, in my view, much importance cannot be attached to said eye-witness.

Insofar as the extra judicial confession is concerned, the said is made to Akshay and Guddu. However, their statements are recorded at belated stage.

Since the investigation is already over, in view of the aforesaid material, especially when there is no material on record to show as to how the police has reached to the present applicant, is in dark, at least *prima facie* the applicant is entitled to be released on bail. Hence, the following order:

1. The application is allowed.
2. Applicant-Subham @ Dubi s/o Babarao Wanjare be released on bail on he executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one solvent surety in the like amount in connection with Crime No.52/2015, registered with Police Station Wadgaon Road, District Yeotmal for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code before the Trial Court.
3. The applicant shall attend the Police Station once in a month preferably on third Saturday of every month, in between 01:00 p.m. to 05:00 p.m., till the culmination of the trial.
4. With these, the application is disposed of.

JUDGE

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