

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

Criminal Application [BA] No.870 of 2014

(Mohammad Shadab Sheikh s/o Abdul Rauf Sheikh and others
 vs.
 State of Maharashtra, through P.S.O. Ghuggus, District Chandrapur)

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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. Mahesh Rai, Advocate for the Applicant.
 Mr. M.J. Khan, A.P.P. for the Non-Applciant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 22, 2015.

After arguing for some time, learned Counsel Mr. Rai, on instructions, submits that the application is not pressed for applicant Nos.1 and 2 viz. Mohammad Shadab and Rahul Dangore. Learned Counsel Mr. Rai, insofar as applicant No.3- Sanjay Durgam, submits that applicant No.3 was arrested on 28/08/2014 and since then he is behind the bars. He further submits that taking into consideration the material collected by the investigating agency in the process of investigation, the material, though not admitting but assuming as it is, is wholly insufficient to connect applicant No.3 with the commission of crime, as alleged and more particularly for the offence under Section 307 of the Indian Penal Code.

Learned Counsel Mr Rai, by inviting my attention to the material, namely the report lodged at the instance of the informant-complainant Akshay Ratne, supplementary statement

recorded by the agency of Akshay, medical certificate and the statement of witnesses. The perusal of that material namely the report, which was lodged at the instance of Akshay, reveals that the incident took place near a pan shop at about 03:00 p.m. Akshay in his report states that there was some dispute between one Sheikh Hazi and Sameer. On the day of the incident, the accused persons approached the spot in a vehicle Fortuner. Though the complainant visualizing some danger made an attempt to run away from the spot, he was followed by accused Shadab and Rakib. The report further reveals that the applicant Sanjay was picked up and Akshay was subjected to kick and fist blows at secluded place by accused Shadab and Rakib. Then Shadab and Rakib with a scarp made an attempt to strangle the complainant, and the applicant-Sanjay was uttering the words 'kill him'. The vehicle then proceeded to a place called as Mirchi Market. Akshay was directed to call one Komal Thakre. When Akshay entered in the house of Komal, Rakib also followed him and gave kick and fist blows to Komal and his father. The supplementary statement of Akshay was recorded on 22nd May, 2014 and 4th of July, 2014. In these supplementary statements also, the role attributed to the applicant-Sanjay is of utterance of words 'kill him'. In the supplementary statement of 22nd, the role attributed to the applicant-Sanjay is utterance of words 'kill him', whereas in the supplementary statement of 4th,

there is a reference to the act of Shadab and Hazi. The other statement of the witnesses hardly reveals anything against the present applicant.

Learned Counsel Mr. Rai submitted that though it is the case of the prosecution that scarp was used for commission of offence, the investigating agency failed to seized or recover the material namely the scarp.

On perusal of the material as referred to above and considering the fact that the investigation is now complete and concluded in filing the charge-sheet and the applicant is behind the bars for more than six months, in my opinion, a case is made out by the learned Counsel for the applicant-Sanjay for grant of bail.

In the result, the application is allowed to the extent of applicant No.3 Sanjay. The applicant no.3 be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two solvent sureties in the like amount in Crime No.89/2014 on the following conditions.

- i. The applicant to attend Ghuggus Police Station, District Chandrapu, on 25th of January, 2015 and thereafter on every second and forth Sunday of the month from 09:00 a.m. to 12:00 noon and maintain diary of his attendance duly countersigned by the Police Station Officer, till commencement of the trial.

- ii. The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicant to submit his residential address and contact numbers, such as phone/mobiles numbers, to the investigating agency or in case of change.
- iv. In case the applicant is moving out of the area of Ghuggus Police Station, he shall take permission and inform the concerned Police Station about his visit to other place.

In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

JUDGE

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