

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

Criminal Application [BA] No.908 of 2014

(Sunil Madhukar Dohatare

vs.

The State of Maharashtra, through P.S.O., Shegaon [Khurd], 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. Alok Chaudhari, Advocate for the Applicant.

Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 14, 2015.

Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.35/2013 (Sessions Trial No.32/2013), registered at Police Station Shegaon (Khurd), Tahsil Bhadrawati, District Chandrapur for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

The learned Counsel for the applicant fairly submits that this is the second attempt of the applicant seeking his enlargement on bail. He submits that as there is a change in circumstance, namely filing of the charge-sheet, the applicant is before this Court. He further submits that an additional circumstance is in the nature that the applicant is behind the bars since long period.

The learned A.P.P. opposes the application with the help of reply filed by the State. He submits that the applicant inflicted blow on the head of the deceased by means of thick wooden log and considering the role played by the applicant, on merit, this Court rejected the earlier application. The copy of the order passed by this Court in Criminal Application [BA] No. 167/2014 is placed on record as Annexure-2. This Court, considering the factual aspect namely the victim and the applicant are brothers and having a long standing enmity over the ancestral property and as such they have strained relationship and on the basis of the material presented before it, found that though the dispute on the day of the incident between the applicant and his brother, wherein the applicant caught hold the collar of the deceased, who tried to be intervened and pacified by the wife of deceased by taking away the victim inside the house, the applicant, who was in so anger, followed the deceased inside the house and inflicted blow on his head with a thick wooden log. This Court finding that there was a difference in versions of the wife and the daughter of the deceased in respect of other accused-applicant no.2 in Application No.167/2014 allowed the application of applicant no.2-Suryakant. This Court, on the material that the applicant, who caught hold collar initially of the victim and subsequently followed the victim and gave blow on his head is the version of

the witness wife couple with the medical evidence in the form of death due to hypovoleamic shock due to head injury, found no favour with the prayer of enlargement of the applicant on bail. Thus, it is more clear that on merits, this Court was not inclined to grant liberty to the present applicant in the nature of his release on bail. The only change in circumstance, as submitted by the learned Counsel for the applicant, is filing of the charge-sheet. Filing of the charge-sheet is a process, where the investigation is concluded with collection of the material. That by itself is no ground to say that there is a change so as to consider the application on its merits.

As stated above and at the cost of repetition, this Court on consideration of the merits of the application was not inclined to grant bail to the present applicant. The ground raised by the learned Counsel for the applicant of changed circumstance, in my opinion, in no way to help the applicant for a fresh consideration by this Court.

The learned Counsel for the applicant, in support of his submission, placed reliance on the judgment of this Court in the matter of Pradeep Shivaji Shinare vs. The State of Maharashtra reported in 2013 ALL MR (Cri) 1317. Though the learned Counsel for the applicant made an attempt to submit that the present applicant is similarly circumstanced with the applicants in the matter of Pradeep Shivaji Shinare vs. The

State of Maharashtra, wherein the investigation was complete and charge-sheet was filed and the application was allowed by this Court, I am unable to accept the submission of the learned Counsel for the applicant for the simple reason that the facts of the present matter differ from the facts in the matter of Pradeep Shivaji Shinare vs. The State of Maharashtra. In the matter of Pradeep Shivaji Shinare vs. The State of Maharashtra, this Court found that there were allegations of the assault against the applicant and also the other accused namely Bharat, Tanaji and Santosh. This Court, on the backdrop of the fact that there was allegations alleged against those accused having led assault on head with sword and there was only one head injury, was of the opinion that there is merit in the submission that there can be exaggeration of the version. In the present matter, the statement of the eye witnesses viz the wife of deceased, is unambiguous and clear to the effect that the applicant, who initially caught hold the collar of the deceased and subsequently in spite of her intervention, entered in the house and gave blow of wooden log on the head of the victim and as such, in my opinion, it cannot be said that there is an element of exaggeration in the present matter.

The learned Counsel for the applicant then placed reliance on the judgment of the Hon'ble the Apex Court reported in 2013 ALL MR (Cri) 4088 in the matter of Atmaram vs. State

of U.P. and another. It seems that before the Hon'ble the Apex Court, the issue was of cancellation of bail granted to the accused persons. The Apex Court, on the ground that the applicant, who were not armed with the sharp weapons and considering the nature of the injuries caused to the victim i.e. lacerated wounds, thought it fit not to interfere with the bails granted to those applicants. Thus, considering even this aspect of the matter, I am afraid that the present applicant cannot be equated with the material as it was in the matter of Atmaram vs. State of U.P. and another. Here in the present matter, the applicant, who led attack with the wooden log resulting in the injury on the victim of the nature of hypovoleamic shock, cannot be said to be similarly circumstanced with those applicants in the matter of Atmaram vs. State of U.P. and another

Considering all these aspects, in my opinion, the application of the present applicant is meritless and deserves to be rejected. Accordingly, the same is rejected and disposed of.

JUDGE

**sdw*