

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

CRIMINAL APPLICATION (BA) NO. 572 OF 2016

(Manoj Gangadhar Gajbhiye Vs. The State of Maharashtra)

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

Court's or Judge's orders

Shri R. K. Tiwari, Advocate for the applicant.
Shri S. S. Doifode, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.
DATED : AUGUST 11, 2016

Heard learned Counsel for the applicant and the learned A.P.P. for the State. Perused the charge-sheet.

According to the learned A.P.P. for the State, there is prima facie evidence available against this applicant and it is in the nature of identification made in the test identification parade and discovery of knife under Section 27 of the Indian Evidence Act.

Learned Counsel for the applicant submits that there is cloud of doubt in respect of holding of the identification parade and that the recovery of knife is also of no use for the prosecution as no blood stains have been found on the knife allegedly recovered. Learned Counsel for the applicant has placed his reliance upon the view taken by the learned Single Judge of this Court in deciding Criminal applications No. 2007 and 2009 of 2006 (*Rajkiran Jiyalal Chandrahas Vs. State of Maharashtra*) by

relying upon the judgment rendered by Division Bench of this Court in the case of *Haresh Mahadeo Kamble & others Vs. State of Maharashtra* – 2002 ALL MR (Cri) 1636. In these cases, it has been held that the procedure prescribed in the Criminal Manual for holding of an identification parade is mandatory and if same is violated, the identification made in such as identification parade, cannot be relied upon.

In the instant case, admittedly, more than two accused have been paraded so as to enable the witnesses to identify the accused persons. This is in violation of the procedure prescribed in the Criminal Manual. According to it, not more than two accused could be included in an identification parade held at a time. Therefore, following the law laid down by the Division Bench and also reiterating the view taken by the learned Single Judge of this Court, I am of the opinion that the evidence collected in the identification parade, at this stage, would offer no assistance to the prosecution.

So far as the recovery of knife is concerned, absence of blood stains on the knife would prima facie suggest absence of any overt act having been played by this applicant. If such is the case, I am of the further view that now no purpose would be served by keeping the applicant in jail for any longer period of time. Hence,

the order.:

The application is allowed and it is directed that the applicant be released on bail on his furnishing a P. R. Bond in the sum of Rs.25,000/- together with one solvent surety in the like amount on the conditions that the applicant shall regularly attend the Court on the dates fixed in the matter, shall cooperate with the Court in expeditious disposal of the case against him and shall not tamper with the prosecution witnesses.

Hamdast is granted.

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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