

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

CRIMINAL APPLICATION (BA) NO.578 OF 2016

(Ajay Jokhure Gupta alias Shahu 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. M. Patwardhan, Advocate for the applicant.
Shri V. P. Gangane, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.

DATED : AUGUST 18, 2016

Heard.

Although it is stated by the learned A.P.P. for the State that there are three incriminating circumstances against this applicant, I find, at least two of them, at this stage, could not be prima facie taken to be incriminating the present applicant. The knife recovered at the instance of this applicant, has not been sent to the office of the Chemical Analyser for analysis and report. The discovery memorandum and seizure panchanama also do not show that this knife was stained with blood. The CDRs seized in this case only show that prima facie there was communication between this applicant and some of the accused persons, but this circumstance by itself cannot be considered to be incriminating. It would have to be considered so in the light of other incriminating circumstances. As stated earlier, the recovery of the knife at the instance of the applicant could not be considered to be prima facie incriminating circumstance against this applicant at this stage.

The third circumstance, on which the prosecution has placed heavy reliance relates to identification of this applicant by the alleged girl-friend of deceased Sonu. From the statement dated 16/3/2015 recorded about two days after the arrest of the applicant, the incident is of 02/11/2014, it is seen that the

incident had taken place on the road on which one petrol pump has been situated and the spot of incident was right in front of this petrol pump. It is an admitted fact that the incident has also been witnessed by the employees of the petrol pump, who were present on the spot of incident. It is an admitted fact that these employees have stated that if the assailants are shown to them, they would be in a position to identify them. However, no identification parade has been held to enable these employees to identify the assailants. No reason for not holding of identification parade has been put forward by the prosecution at this stage. The statement of Sonu has been recorded about four months after the incident and in particular two days after the arrest of the applicant. In these circumstances, I am of the view that prima facie there is a doubt about identification made by the witness Sonu. If this is so, the CDRs, at this stage could not be considered by themselves to be providing any incriminating circumstance against this applicant.

In the above referred circumstances, I am inclined to grant this application.

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.20,000/- together with one solvent surety in the like amount on the conditions that he shall attend the Court on the dates fixed in the matter, shall cooperate with the Court in expeditious disposal of the case and shall not tamper with the prosecution witnesses.

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true
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