

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

**CRIMINAL APPLICATION (BA) NO.632 OF 2016**

*(Mahesh Namdeorao Lambat Vs. The State of Maharashtra)*

**AND**

**CRIMINAL APPLICATION (BA) NO.637 OF 2016**

*(Nadeem Ahmed Gulam Nabi Shiekh Vs. The State of Maharashtra)*

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

Court's or Judge's orders

S/Shri A. Merchant, R. K. Tiwari & P. S. Jaiswal, Advocates  
for the applicants.

S/Shri S. S. Doifode and T. A. Mirza, A.P.Ps. for the State.  
Shri B. L. Borikar, Advocate for the intervenor.

**CORAM : S. B. SHUKRE, J.**

**DATED : AUGUST 25, 2016**

Heard.

For the reasons stated in the application, the  
application is allowed and leave to assist the prosecution is  
granted.

Heard learned Counsel for the applicants and  
learned A.P.P. for the State assisted by Shri Borikar, learned  
Counsel for the intervenor.

The applicants, have been detained in jail in Crime  
No. 180/2011 registered against them on 08/11/2011 by  
Police Station, Kotwali, Nagpur for an offence punishable  
under Section 302 read with Section 34 of the Indian Penal  
Code on the allegation that both of them conspired to  
eliminate the deceased Subhash Shahu by administering him

deadly poison, potassium cyanide and the plan was actually executed by accused No.2 i.e. Nadeem Ahmed, who is applicant in B. A. No. 637/2016.

From the charge-sheet and the documents filed on record by the applicants, it is seen that initial investigation carried out by the police did not lead to any detection of the accused in this crime and, therefore, "A" summary report was filed. "A" summary report disclosed that although, the murder was committed by administering poison to the deceased, the culprits could not be found out. When one of the relatives appeared before the learned Magistrate in response to the notice issued by him in respect of the report, it was stated that there was a suspicion against one Sanjay Awtare. Since such a suspicion was expressed, learned Magistrate, in his discretion, thought it fit to reject the report and he passed an order of rejection of the report. He also directed that further investigation be carried out and accordingly further investigation was carried out.

While, it is not necessary, for the purpose of these applications, to go into the details and the manner in which further investigation was carried out, suffice it to say that the person, Sanjay Awtare, against whom suspicion was raised, was not made an accused, that supplementary statements of

some of the witnesses were recorded, and the identification of the applicants was also carried out. According to the prosecution, the evidence so far collected prima facie discloses that Nadeem was seen by some of the witnesses as handing over one plastic bottle containing some liquid, which in the presence of the witnesses was consumed by the deceased after which, deceased started feeling dizziness and was required to be hospitalized. He was admitted to hospital where while being under treatment, he breathed his last. The prosecution case is also that, all these witnesses have identified accused No.2 Nadeem Ahmed, as the person who handed over the plastic bottle containing the poisonous liquid.

Learned A.P.P. for the State points out from the C. A. Report that potassium cyanide was detected from the viscera of the deceased and its traces were also detected in the plastic bottle, which was seized from the body of the deceased. However, learned Counsel for the applicants submit that this would not by itself show prima facie culpability of applicants. They submit that supplementary statements of the witnesses have been recorded after about five years and when the charge-sheet came to be filed, only the supplementary statements were filed and the original statements were suppressed from the Court. They further submit, on being

demanding by the applicants, later on, the original statements were placed on record. They further submit, if these statements are perused, a doubt about prosecution case against the applicants would arise.

On perusal of statements of these witnesses, I find that there is a material variance between the versions narrated by these witnesses when their statements were initially recorded and what they stated later on in their supplementary statements. In their first version, these witnesses state that they saw the deceased as consuming some liquid contained in a plastic bottle but do not say that they saw the applicant Nadeem handing over the plastic bottle to the deceased. All that they say in their first version is that the plastic bottle was taken out from the shirt pocket by the deceased, its lid was opened by him and the liquid contained therein was gulped down by him. They also say that they were told by the deceased that the plastic bottle contained holy water and it was given to him by one 'Maharaj'. This 'Maharaj', now has been stated and identified to be applicant-Nadeem, as per the prosecution story. In their second version the witnesses say that they had actually seen this 'Maharaj' as handing over the plastic bottle containing some liquid to the deceased. This variance between two versions is of material nature and as of

now, I do not see any material on record prima facie explaining the variance. Therefore, I am of the view that the prosecution case as against the applicant Nadeem cannot be said to be presenting a very strong prima facie window to scene of crime unfolding what must have happened, who may have enacted what roles to administer the holy water and with what intention or knowledge, criminal or innocent. I would also say that on the intention or knowledge dimension, there is no prima facie evidence that the person who gave the plastic bottle had purchased or procured or was given by somebody else intentionally the potassium cyanide, thereby creating a prima facie doubt about this aspect of the matter.

So far as the applicant Mahesh in B. A. 632/2016 is concerned, the allegation against him is that he is one of the conspirators. But, again the evidence collected so far is of such a nature as to create doubt about his being such a conspirator. It is also argued on behalf of applicants that there is a doubt about identification parade as sketches were published in newspapers and applicants were shown to witnesses earlier. I do not find it necessary to consider the argument at this stage, in view of what is found earlier and stated before.

In all these circumstances, the applicants are entitled to be released on bail.

Both the applications are allowed.

It is directed that the applicants; Nadeem Ahmed and Mahesh Lambat shall be released on bail on each of them furnishing P. R. Bond in the sum of Rs.25,000/- together with two solvent sureties in the like amount on the conditions that they shall regularly attend the Court proceedings 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.

Hamdast is allowed.

**JUDGE**



**CERTIFICATE**

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

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