

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPA] No. 533 of 2016
IN
Criminal Appeal No. 312 of 2016
[Pintu @ Vijay Vitthalrao Bonde & two others Vs. State of Mah.]

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

Court's or Judge's orders

Mr. Anil S. Mardikar, Senior Adv., with Mr. S.G. Joshi, Adv., for the applicants.
Mr. Jawade, APP for respondent.

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**CORAM : B. P. DHARMADHIKARI
AND
A.S. CHANDURKAR, JJ.**

DATE : 01st September, 2016

Three accused persons convicted by Additional Sessions Judge, Akola, on 22nd July, 2016 in Sessions Trial No. 153 of 2007 are before this Court for their release on bail. It is not in dispute that they were on bail during trial.

We have heard learned Sr. Adv. Shri Anil Mardikar with Adv. Shri Joshi for the applicants and learned APP Shri Jawade for the respondent.

Six remaining accused persons have been acquitted by the Trial Court.

The conviction is only because of recovery of incriminating material at the instance of these applicants. The incriminating material seized is two pieces of fibre pipe, one gunny bag filled with metal and a Bamboo stick. The recovery is witnessed by the Panch - Bharat [PW 5] on 2nd, 4th, 8th and 31st August, 2007. Though he claims that two fibre pipes were recovered under Section 27 of the Evidence Act - one from Accused No.1 - Nilesh and the other from Accused - Prashant, he has identified the Property No.2/08 only as that pipe. Thus, recovery of two separate pipes in his presence may become doubtful.

Story of prosecution is that a gunny bag was thrown on deceased on terrace of the building "Priya Tower" and that gunny bag was filled with metal. It appears that during spot Panchanama, a gunny bag filled with metal was seen there. Here, recovery of a gunny bag with metal is from the residence of Accused - Pintu alias Vijay.

Bamboo stick has been recovered from accused - Shekhar Sharma.

The articles seized are not demonstrated to be connected with the crime in question, because same were never forwarded to the Chemical Analyzer for any forensic examination. Similarly, cross-examination of Bharat reveals that he is distantly related to the deceased, he was staying at a distance of about thirty

kilometers, and was allegedly invited by giving him a call on his mobile to witness the recovery. He could not exactly describe the premises from which alleged recovery was effected.

In this situation, we find that the applicants are entitled to be released on bail.

Hence, on applicants furnishing fresh bail bonds on same terms and conditions as before Trial Court, and also undertaking to attend the Trial Court on first working Monday after every two months, they shall be released on bail. The failure to remain present, as mentioned supra, shall be construed as a breach of bail condition and their bail shall accordingly stand cancelled automatically.

Application is, thus, allowed and disposed of.

Judge

Judge

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C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by : R.B. Hedau,
Pvt. Secretary.

Uploaded on : 01st Sept., 2016

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