

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

Criminal Application (BA) No. 727 of 2016

Sushil Prabhakar Dekate vrs. 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

Shri Mir Nagman Ali, Advocate for applicant.
Shri S. D. Sirpurkar, APP for respondent-State.

Coram : S. B. Shukre, J

Dated : October 26, 2016

Heard learned counsel for the applicant and
learned APP for the State.

On perusal of the charge sheet, it is seen that this applicant is almost equally situated with co-accused Ajay Gupta who has been granted bail by this Court on 18th August, 2016. While no blood stained clothes were recovered, at the instance of the co-accused Ajay, same have been recovered at the instance of this applicant. C.A. report is awaited. Except for this, the applicant is equally situated with said co-accused. But, this circumstance by itself will not go against the applicant, especially when the best witnesses who had seen the incident were not even called to the identification parade held to identify the culprits.

According to the prosecution, there is another eye-witness available. The name of the witness is Sonu Bagde, the girl-friend of deceased Ganesh. Incident took place on 02/11/2014. The report of the incident was given by the brother of the deceased. The statement of Sonu Bagde was recorded on 16/03/2015, after filing of the first charge sheet.

The first charge sheet was filed on 30/01/2015. A perusal of the statement does not show that she has given any reason for keeping such a long silence. She has, however, identified this applicant. Such identification of the applicant, after a great delay would have to be considered in the light of the failure of the Investigating Officer to hold identification parade for the immediate eye-witnesses, such as Mangesh, Anil, Manoj, Santosh and Ashok to enable them to identify the assailants. Investigating Officer, as seen from the reply of the prosecution as well as material available on the record, has given no reason or explanation for this significant lapse. Therefore, I am of the view, at this stage that, there is a serious doubt about the identification of this applicant made belatedly by another eye-witness.

If there is a serious doubt about the identification of this applicant, recovery of blood-stained clothes from the applicant by itself would not be sufficient to justify, his detention in jail. Moreover, Abdul Irfan from whom, sword has been seized, has already been released on bail by this Court on 9th April, 2015. So, on the parameter of recovery of blood-stained clothes or articles, this applicant stands on equal footing with co-accused Abdul Irfan.

In the circumstances, I find that this application deserves to be allowed.

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 regularly on the dates fixed in the matter, shall co-

operate with the Court in expeditious disposal of the case and shall not tamper with the prosecution witnesses.

The application stands disposed of accordingly.

JUDGE

Choulwar