

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

Criminal Application [BA] No.745 of 2016

(Bhagwan s/o Kanba Waykule

vs.

State of Maharashtra, through P.S.O. Bitargaon, Tah. Umerkhed, District Nagpur)

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

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Court's or Judge's Orders

Shri T.U. Tathod, Advocate for the Applicant.

Shri S.D. Sirpurkar, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 20th OCTOBER, 2016.

Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

In this case, the prosecution has not filed any reply, although, notice was issued to it on 02/09/2016 and thereafter sufficient time was also granted to it. If the Investigating Officer does not give any instruction regarding filing of the reply, nothing can be done in the matter except to go ahead with the hearing on the application on the basis of the material filed on record by the applicant.

In this case, I have perused the copy of the charge-sheet, which is forming part of paper-book of the application. It is seen from the charge-sheet, particularly the statement of the complainant initially recorded as a dying declaration by the Executive Magistrate on 23/10/2015, which appears to be the basis for registration of the offence, no role has been specifically assigned to this applicant insofar as setting afire the complainant is concerned. In this dying declaration, the complainant stated that the co-accused Anita and Rani held her hands, while the other co-accused Dutta, after pouring

kerosene oil on her person set her afire. However, in the second dying declaration, dated 27/10/2015, the complainant deceased changed her version, wherein she stated that not only Anita and Rani held her hands even this applicant also held her hands. It appears that there are no other witnesses to the incident. In such a case, I am of the view that there would be some doubt about the truthfulness of the version given by the deceased. The investigation is already over as charge-sheet has been filed on 21/01/2016. In these circumstances, the applicant would be entitled to be released on bail. 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.20,000/- together with one solvent surety in the like sum on the following conditions:

- i. The applicant shall regularly attend the court dates fixed by the trial Court in the matter.
- ii. He shall co-operate with the trial Court in expeditious disposal of the case.
- iii. He shall not tamper with the prosecution witnesses in any manner.

The application is disposed of in above terms.

C E R T I F I C A T E

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

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 20/10/2016