

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

CRIMINAL APPLICATION (BA) NO.905 OF 2016

Bhimrao s/o Abhiman Gondane, Dongar Mauda, Tah. Kuhi, Dist. Nagpur (In jail)

-vs-

State of Maharashtra, Thr. PSO, PS Veltur, Nagpur

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

Court's or Judge's Orders.

Shri Yogesh V. Nayyar, Advocate for applicant.

Shri S. A. Ashirgade, Addl. PP for non-applicant/State.

CORAM : P. N. DESHMUKH, J.

DATE : December 13, 2016

This is an application by one of the accused who is involved in Crime No.51/2016 registered by Police Station Veltur, Nagpur under Section 302 read with Section 34 of IPC for bail.

Learned counsel for the applicant has submitted that charge-sheet is filed and according to complainant as well as additional statement of Akshay Meshram and his statement under Section 164 Cr.P.C. there is no consistency in his statement with regard to weapon possessed by applicant at the time of incident though from the statement as aforesaid, only presence of complainant can be seen on the spot. It is therefore contended that since there is involvement of two other co-accused who are also stated to be armed with weapons like gupti, knife, applicant is entitled for bail as there is no recovery of any weapon from the applicant

except one bamboo stick. It is further contended that even if contents of FIR are accepted as it is, only role attributed to applicant is of his pressing mouth of deceased Parmanand upon whom assault is alleged to have committed by co-accused Hari Goswami on his chest and abdomen by gupti. In the circumstances, it is contended by learned counsel that even conduct of complainant is doubtful as according to him inspite of his witnessing the incident as aforesaid, he did not find it necessary to inform about it to anyone and went on terrace of Samaj mandir and went asleep. In the circumstances, it is contended that as according to PM report, the cause of death is stated to injury to head and limited role attributed to applicant of pressing mouth of deceased, he be released on bail.

Learned Addl. Public Prosecutor has opposed the application on the ground that there is direct evidence establishing presence of accused on the spot and has contended that merely because in the report as well as supplementary statement, there are different weapons attributed to applicant, fact remains that he was armed with weapon and during the course of assault upon the deceased, applicant had pressed his mouth upon which assault was thus committed by co-accused. It is therefore contended that in view of evidence as aforesaid, application is liable to be rejected.

In the set of given circumstances, on perusal of report by Akshay, it appears that prior to incident of assault on deceased in the night intervening between

24-05-2016 and 25-06-2016 at about 2.00 p.m., there was some incident on 24-05-2016 at about 5-00 p.m., which was involving applicant and Pratibha wife of applicant on one part and the deceased on other part. In the night when deceased was sleeping in the courtyard, he was assaulted by co-accused Hari who was armed with dagger, Santan Shende, who was armed with weapon which was like knife and applicant by axe. It is further contended that applicant pressed mouth of deceased while co-accused Hari committed assault by dagger on his chest and abdomen. First Information Report is noted to be lodged on 25-05-2016 at about 8.45 a.m.

Contents of supplementary statement of complainant dated 31-05-2016 when perused, reveals that role attributed to applicant is that he pressed the mouth of deceased and at the same time there was some noise when complainant found co-accused Santan Shende having armed with axe. It is further contended that co-accused Hari caught hold of deceased from his legs. As such contents of report as well as additional statement of complainant when compared with regard to involvement of applicant, in the report applicant is stated to be armed with axe while in the supplementary statement co-accused Santan is said to be armed with axe.

It is further noted that during the course of investigation, complainant's statement under Section 164 of Criminal Procedure Code came to be recorded

wherein role attributed to applicant is of his pressing mouth of deceased and of co-accused assaulting by axe on his head.

In the light of contents of statement, additional statement as well as statement of complainant under Section 164 of Criminal Procedure Code, it is noted that three versions are on record, and it is noted that in all these statements presence of accused is established on the spot having been armed with weapon.

In the background of facts as aforesaid when Post-Mortem Report is perused, it corroborates case of prosecution of deceased having been assaulted on his chest and abdomen as well as on head as he is stated to have sustained three incise wounds on the chest and one lacerated wound over scalp, apart from other lacerated wound on the finger. The cause of death of deceased is stated to be due to injuries sustained on head and brain.

In view of above stated statements, supported with medical evidence as aforesaid, applicant does not deserve to be released on bail, however, in view of inconsistencies as noted above and charge-sheet is already stated to be filed on 23-08-2016, application is required to be disposed of by imposing certain terms as per order below.

Order

- (i) Application is rejected.
- (ii) The learned trial Judge, whosoever is ceased with sessions trial arising out of Crime No.51/2016 for the offence punishable under Section 302 of Indian Penal Code,

is requested to expedite the same and to make an endeavour to conclude in any event by 31-03-2017.

(iii) In the event trial is not concluded as aforesaid, applicant shall be at liberty to move application for bail afresh.

(iv) Needless to say that trial Court shall not get influenced with any of the observations in the abovesaid order and shall independently evaluate the evidence on record.

JUDGE