

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

CRIMINAL APPLICATION (BA) NO.999 OF 2016
(Ajay s/o Dinkarrao Kukde vs. The State of Maharashtra)

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

Shri R.M. Daga, Advocate for applicant.
Shri S.A. Ashirgade, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : DECEMBER 06, 2016

Heard learned Counsel for both sides.

This application is filed by applicant for
grant of bail in Crime No.823/2016 registered by Police
Station, Hinganghat for the offence punishable under
Section 302 read with Section 34 of Indian Penal Code.

Shri Daga, learned Counsel for applicant, by
referring to the contents of report has pointed out that
there is no involvement of applicant found as same is
lodged by one Police official, who at the material time
was on emergency duty. Attention is invited to
statements of Chandrabhan, father of deceased as well as
Manoj, brother of deceased, on the point of last seen
together and it is pointed out that their statements do
not establish involvement of applicant as name of
applicant mentioned therein is Ajay Weldingwala while
there is nothing on record to establish that applicant is
doing any welding work or has any fabrication shop. It
is also pointed out that no reason is put forth by

prosecution for not recording statements of Chandrabhan and Manoj immediately when they had visited Police Station after learning about death of Deepak. As such, there is no immediate disclosure made by these witnesses with regard to deceased Deepak last seen in the company of applicant or co-accused.

Shri Ashirgade, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that there is a direct evidence establishing involvement of applicant as from the statements of Chandrabhan and Manoj, it is revealed that prior to death of Deepak, he was taken from his house by applicant along with co-accused Bandu Joge and Changya Netam and he was found having sustained serious injuries on the road and died subsequently when being admitted to Government Hospital at Wardha. By referring to statement of Manoj, learned Additional Public Prosecutor has submitted that from his statement, it is established that prior to incident, deceased had indulged into quarrel with applicant and as such, he was subjected to assault by applicant thereafter due to which he sustained serious injuries and succumbed to same.

In the background of submissions advanced as aforesaid, on perusal of the report lodged by Police Constable, it is found that in the night intervening between 11/6/2016 and 12/6/2016 he was on emergency duty and at about 11.30 p.m. he received information about some person lying in the injured condition on the road. Accordingly, Police officials visited the spot and found one person in unconscious

condition having sustained injuries on his head. He was thus initially referred to Sub-District Hospital at Hinganghat where he was provided first aid and on the advice of Medical Officer, he was referred for further treatment to Government Hospital at Wardha in ambulance. However, on reaching Hospital at Wardha at 1.30 a.m. he was declared dead on admission. At this stage it is material to note that admittedly it is not the case of prosecution that till death of Deepak, while being transported to Hospital at Wardha, any attempt was made to record his statement. Learned Additional Public Prosecutor at this stage submits that as per report, deceased Deepak was unconscious. Even accepting the case of prosecution as aforesaid, on perusal of report, there is no involvement of applicant found as Police lodged report against unknown persons and on the strength of which, A.D. was registered.

From the documents it is found that applicant's involvement is only on the strength of statements of Chandrabhan, father of deceased and Manoj, brother of deceased, which were recorded on 14/6/2016. Date of recording their statements is material in view of the fact that both these witnesses have stated that in the night of 11/6/2016 deceased Deepak went out of house at around 9.45 p.m. along with applicant and co-accused Bandu Joge and Changya Netam and in the same night, at about 4 o'clock Police from Hinganghat on visiting their home informed that Deepak was murdered and, therefore, Chandrabhan and Manoj visited Police Station. Admittedly, on their

reaching Police Station, there is no disclosure by any of these witnesses about applicant taking deceased Deepak along with two other co-accused in the night at 9.45 o'clock. Statements of these witnesses are recorded three days after death of Deepak. Even according to their statements, they had learnt that Deepak died of assault due to some incident, which took place at Nandgaon Chowk. Involvement of applicant is shown as Ajay Weldingwala. Admittedly, name of applicant as found in the title of application is Ajay Dinkarrao Kukde and there is nothing on record to establish that applicant is also known by his alias name as Ajay Weldingwala.

Considering the involvement of applicant as aforesaid, which is mainly on the theory of last seen together and no recovery of weapon is effected from applicant, application is liable to be allowed by imposing suitable conditions as per order below :

The applicant be released on bail on his executing P.R. bond in the sum of Rs.50,000/- with one surety in like manner. The applicant shall report to Police Station, Hinganghat once in three months pending trial.

The criminal application is accordingly allowed.

JUDGE

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