

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLIATION (BA) NO.6 OF 2017.

Mohammad Wajid Abdul Raheman

..VS..

State of Mah.thr.PSO,PS Achalpur, Dist.Amravati.

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

Mr.R.M.Daga, Adv. for the applicant.

Mr.S.D.Sirpurkar, APP for the State.

CORAM : P.N. DESHMUKH, J.

DATE : 1st MARCH, 2017.

1. This application is filed for grant of bail by one of the co-accused involved in Crime No.81 of 2015, registered at Police Station Achalpur, Distt.Amravati for the offence punishable under Sections 143, 147, 148,149, 302, 307, read with Section 135 of the Bombay Police Act.

Before proceeding further, it is necessary to note that in this matter Umeshchandra Yadav is appointed as a Special Public prosecutor. After notice was served, Shri A.V.Palshikar, Additional Public Prosecutor, on 27th January, 2017, made a statement that learned Special Public Prosecutor is available on 3rd of February, 2017. On that day, Advocate Shri Sonawane appeared for Special Public Prosecutor and tendered on record written notes of argument and on his application matter was adjourned for hearing to 3rd February, 2017. On that day, Special Public Prosecutor was not present and therefore matter

was adjourned to give an opportunity to prosecution to oppose the application to 27th February, 2017 with specific directions that in the event respondent is not represented, matter shall be decided on considering the written notes of argument. As on that day also Special Public Prosecutor was not present, with a view to give additional opportunity, matter was listed for today with instructions to Additional Public Prosecutor to inform about the date to Special Public Prosecutor. Today, Shri Sirpurkar, learned Additional Public Prosecutor has stated that as per the telephonic instructions received from Special Public Prosecutor, he has informed his inability to attend the Court and has further informed to proceed with the matter by considering written notes of argument. Accordingly, application is heard.

2. Learned counsel for the applicant has submitted that in all fifteen accused are involved in this Crime out of which except for applicant, all are released on bail by this Court and has submitted that even sofar as present applicant is concerned, there is no sufficient evidence to keep him behind bars as eyewitnesses' statements are contrary to the contents of report lodged by Raju, cousin of deceased Amit. It is further pointed out that contents of FIR are falsified from the postmortem report as according to said document there is no surface injuries found on the head of deceased. It is, therefore, contended that applicant is entitled for bail on merits apart from parity.

3. Prosecution as per written notes of argument has opposed the application mainly on the ground that there is direct

evidence against applicant who had used an axe in order to commit murder of deceased Amit and as such, has hit on the head and legs of deceased due to which deceased sustained fatal injuries and on the ground that no case is made out by applicant on parity as applicant's case can be differentiated from other co-accused as there is no sufficient evidence against them to establish assault on deceased by them. Prosecution has thus prayed for rejection of application.

4. In the background of submissions advanced as aforesaid, perusal of report reveals that incident took place on 11th August, 2015 on which day at about 2.00 p.m. there was some quarrel between complainant's uncle Mohan and 6 to 7 accused named in the FIR and 7 to 8 other accused, on the count of tractor which was taken from the field. Complainant has stated that after said incident, at 2.00 p.m., 7 – 8 persons visited house of Mohan, father of the deceased, when they have given call to deceased Amit, his mother informed that he has gone towards Idgah side and thus those persons proceeded towards Idgah side to whom complainant followed. He further stated that near Hanuman temple his uncle and his son Amit were assaulted by those 12 to 15 persons and has stated that amongst them one was applicant armed with an axe who gave blow on head of deceased and has further stated about other co-accused persons assaulting Mohan on his head and legs. Thus, from the FIR, complainant is specific about applicant Mohd.Wajid assaulting on the head of deceased Amit by axe.

In view of specific contents of FIR as aforesaid, on

perusal of post mortem notes it is material to note that at the time of performing postmortem note, surface injury was found sustained by deceased except for one lacerated wound over the palm of his left hand and upon finger of left hand. As per said document, cause of death is stated to be due to head injuries.

This document thus, creates reasonable doubt sofar as contents of report involving applicant to have committed assault on head of deceased by axe is concerned. Moreover, on perusal of statement of other eyewitnesses, Gajanan Sadafale when perused it reveals that in the initial part of his statement recorded on 17th August, 2015 he has stated that assault was committed on deceased as well as his father Mohan by 10 to 15 persons by iron pipe, axe, wooden logs, stick and by kick and fist blows. His statement is thus general statement and has not attributed any overtact to any of the assailants, much less to applicant and in the last para of his statement has named 14 assailants including applicant, as stated above, and as such there is no overtact attributed to applicant nor he has stated that the applicant was armed with axe.

Statement of Indalsingh Thakur also does not establish overtact upon applicant except for his stating that the applicant was armed with an axe. Similar are statements of Milind and Anand, while according to statement of Nitin the applicant is stated to have committed assault by axe. However, he is silent as to on what part of body of Amit applicant committed assault. In view of above statements of eyewitnesses, thus though it is established that applicant was one of the assailants along with 14 others, who were armed with various

weapons like iron pipes, wooden logs and though applicant is attributed to be armed with axe, there is nothing to substantiate contents of FIR to the effect that applicant committed assault by axe on head of deceased which was fatal causing death of Amit as contents of report are not substantiated from the postmortem notes having no mention of surface injury found on the head of deceased. In that view of the matter, prima facie, it is found that applicant is entitled for bail even on merits apart from parity by imposing suitable conditions, as per order below.

Applicant Mohammad Wajid Abdul Raheman shall be released on bail in Crime No.81 of 2015 registered at Police Station Achalpur, Distt.Amravati on his executing P.R. bond in the sum of Rs.50,000/- with one surety in the like amount.

Applicant shall mark his presence with Police Station Achalpur, Distt.Amravati once in three months on the first day of each such month, pending trial and shall not leave territorial jurisdiction of Achalpur city without permission of the trial Court.

JUDGE

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