

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

CRIMINAL APPLICATION (BA) NO.15 OF 2017

(Manoj @ Ranti s/o Ramnarayan Yadav 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 A.V. Palshikar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 18, 2017

Shri Palshikar, learned Additional Public
Prosecutor for respondent, has tendered at Bar affidavit-
in-reply and supplied copy thereof to learned Counsel for
applicant.

Shri Palshikar, learned Additional Public
Prosecutor seeks leave to correct address of applicant as
stated in the affidavit-in-reply.

Leave as prayed is granted. Necessary
correction be carried out forthwith.

Heard Shri Daga, learned Counsel for
applicant, and Shri Palshikar, learned Additional Public
Prosecutor for respondent.

This is an application for bail by accused
involved in Crime No.89/2015 registered under Sections
302 and 201 read with Section 34 of Indian Penal Code
and Sections 3 and 25 of Arms Act.

Shri Daga, learned Counsel for applicant, has
submitted that case of prosecution is based on sole
statement of alleged eye witness Harishkumar Chelani,

which was recorded after about nine months of incident, which took place on 6/8/2015 with regard to finding of dead body of Ramesh Shahu in a nalla at a distance of about 35 kms. from alleged place of assault, i.e. Dhaba owned by Nagendra Yadav. It is contended that except for statement of sole eye witness, there is no statement of other persons, who are named in his statement recorded during the course of investigation nor there is any convincing reason put forth by prosecution for not recording statements of said persons. It is, therefore, submitted that since admittedly case of prosecution is based on the sole statement, which itself is doubtful, applicant be released on bail as charge-sheet is filed and co-accused, owner of Dhaba, namely, Nagendra Yadav is already released on bail.

Shri Palshikar, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that there is nothing to disbelieve eye witness Harishkumar Chelani. It is submitted that said Harishkumar Chelani did not report the incident to Police earlier since he was threatened by accused involved in this crime. It is further contended that according to his statement, applicant had initially opened fire upon deceased Ramesh Shahu, however, since he missed the target, he committed assault by iron utensil used for cooking purpose at Dhaba by giving blow upon Ramesh Shahu, due to which he died.

It appears to be the case of prosecution that on telephonic information received by Police from one Dhanraj Kohale about lying of dead body of one

unknown person in a nalla, Police arrived at the spot and found dead body of one unknown person lying there, having tied its face with plastic bag. The dead body was found to have sustained one injury on his head. In spite of making attempt to get the dead body identified, the same could not be identified by anyone and, therefore, offence under Section 302 of Indian Penal Code came to be registered against unknown person.

Copy of case diary made available reveals that it is only on 28/6/2016 i.e. about nine months after the incident dated 6/8/2015, statement of one Harishkumar Chelani is recorded, who has stated to have witnessed the incident of assault upon deceased by applicant. He stated that while he was working in Dhaba owned by Nagendra Yadav, co-accused and was present along with one Ganesh Sahare, Raju and Bhaskar, applicant committed assault on deceased by iron utensil used for cooking food (spatula). He has further stated that applicant along with co-accused thereafter carried deceased in their vehicle and went towards Hingna road and co-accused extended threats to him and other persons not to disclose about incident to anyone.

Having considered the aforesaid statement, it is material to point out that in spite of eye witness naming other persons as aforesaid, who have witnessed the incident, no statement of any of these persons is recorded. For that purpose, learned Additional Public Prosecutor has submitted that they were working as Waiters in Dhaba and their residential addresses were

not available. However, learned Additional Public Prosecutor has conceded that there is nothing in the charge-sheet to establish that any attempt was made by Police for recording statements of any of these persons.

Similarly, though from the statement of alleged eye witness, involvement of applicant is established as an assailant of deceased, there is sufficient room to doubt said contents in view of the fact that Harishkumar Chelani had not disclosed about said incident to Police any time before. Learned Additional Public Prosecutor for that reason, by relying upon contents of the statement, has contended that it is because of threats extended to him, he had not disclosed about the incident to Police earlier. However, it has been rightly pointed out that no such threats were extended by applicant as according to statement of Harishkumar Chelani, such threats were extended by co-accused Nagendra Yadav, who is already released on bail by this Court.

Having considered facts as aforesaid and as case of prosecution is based on statement of sole eye witness, which, for the aforesaid reason, prima facie does not appear to be convincing, application is liable to be allowed by imposing suitable conditions as per order below :

Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.20,000/- with one surety in like amount. While on bail, applicant shall mark his presence with Police Station, Hingna, District Nagpur on first day of every three months pending trial.

The criminal application is accordingly allowed.

JUDGE

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