

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

CRIMINAL APPLICATION (BA) NO. 19 OF 2017.

Vijay Bhaurao Rathod

..VS..

The State of Mah.thr.PSO,P.S.Jiwati, Tq.Jiwati, Distt.Chandrapur.

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

Mr.A.D.Hazare, Adv. for the applicant.

Mr.A.M.Deshpande, APP for the State.

CORAM : P.N. DESHMUKH, J.

DATE : 16th MARCH, 2017.

1. This application is filed for grant of bail by accused involved in Crime No.78 of 2016, registered at Police Station Jiwati, Distt.Chandrapur for the offence punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code.

2. Heard learned counsel for the applicant and learned Additional Public Prosecutor for the State.

3. It is submitted that case of prosecution is based on circumstantial evidence and that, applicant is arrested without sufficient reasons. Learned counsel for applicant has referred various statements of witnesses on record and has demonstrated as to how from their statements only suspicion is raised against the applicant and as such, has submitted that for want of sufficient evidence application be

allowed as investigation is complete and charge-sheet is already filed.

4. Learned Additional Public Prosecutor opposed the application on the lines of affidavit-in-reply filed on record and has submitted that from the statement of wife of deceased Shivaji, it is established that relations between the applicant and deceased Shivaji Gite were strained, as according to his wife, applicant was indulged into establishing relations with her which, wife of deceased was not accepting and for that reason she has suspected applicant to have eliminated deceased. Learned Additional Public Prosecutor by further referring to statements of Rohidas Shripat Pawar, Devidas Pawar and Shripat Rupchand Pawar, Sarpanch, has attempted to point out how statements of these witnesses on certain aspects differ from the statement/report of applicant on the basis of whose report/statement present offence is registered, and has lastly contended that as per the case of applicant deceased Shivaji is assaulted by two unknown persons by sharp edged weapons and in the course of same transaction, applicant has also sustained injuries to his thigh which, during the course of investigation, revealed to be self inflicted injury. Learned Additional Public Prosecutor thus concluded that on the basis of these facts, applicant came to be arrested and contended that as there is sufficient evidence, application be rejected.

5. Sofaras this crime is concerned, it is material to note that same is registered on the basis report lodged by applicant wherein he has stated that on 15th July, 2016 at about 8.00 p.m. he along with deceased Shivaji was proceeding on motorcycle when near road proceeding to village Nagapur, two persons were already sitting on a

stationary motorcycle who intercepted them, out of which one person committed assault on Shivaji on his abdomen and on applicant's left thigh by a sharp edged weapon. It is further stated that due to which Shivaji sustained injuries and was lying on the spot while he ran upto half kilometer distance and contacted Shripat Pawar, Sarpanch of village Nagapur and informed him about incident who got applicant admitted in the hospital while Shivaji succumbed to injuries, on the spot. On the basis of report lodged by applicant, as aforesaid, offence is registered in the night intervening 15th July, 2016 and 16th July, 2016 at about 3 a.m. against two unknown persons.

6. It is the case of prosecution that during the course of investigation applicant's involvement came to be found on the basis of statements of Rohidas and Devidas, which are also relied by learned Additional Public Prosecutor, however, on perusal of statements of these two witnesses there appears nothing which could establish applicant's involvement in the present crime. In fact, material contents of their statements corroborate with the contents of report lodged by applicant i.e. about assault on deceased Shivaji by two persons who had intercepted applicant's motorcycle upon which he along with deceased were proceeding.

7. Similarly, on perusal of statement of Parvati, wife of deceased, though she claims that applicant prior to incident was for no reason contacting her on cell phone due to which she found applicant developing intimacy with her, said incident is stated to be of 15th May, 2016 which is roughly prior to two months of incident. From her statement, for this reason, Parvati appears to have suspected applicant

behind the murder of her husband, as according to her statement, in the background of said conduct of applicant, he had taken her husband on his motorcycle. From her statement even otherwise it is found that deceased was found with applicant for a last time on 15th July, 2016 at about 6.30 p.m. while from the statement of Sarpanch dead body was found at around 10.00 p.m. on the same day.

8. Considering statements of these witnesses heavily relied by prosecution, thus it can only be said that applicant is arrested on the basis of suspicion raised by Parvati, as aforesaid, and from statements of Rohidas and Devidas no involvement of applicant to reject the application can said to be established.

9. According to the postmortem report, deceased is certified to have sustained as many as 11 injuries out of which seven are stab wounds, three are lacerated wounds and death is certified to be unnatural, caused due to hemorrhagic shock as a result of injuries. This document though establishes unnatural death of deceased Shivaji, there is nothing to establish involvement of applicant in the present crime except for statement of Parvati and the medical report which is another document relied by prosecution against the applicant vide which in a reply to query made to Medical Officer, according to the Medical Officer the injury sustained by applicant on thigh can be possible, if self-inflicted.

10. Having considering facts as aforesaid and as investigation is complete, available evidence against the applicant is too short to consider involvement of applicant in this crime. Hence, application is

allowed as per following order.

Applicant Vijay Bhaurao Rathod shall be released on bail in Crime No.78 of 2016, registered at Police Station Jiwati, Tq.Jiwati, Distt.Chandrapur, on his executing P.R. bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

While on bail, applicant shall mark his presence with Police Station Jiwati, Distt. Chandrapur once in three months on the first day of each such month, pending trial.

While on bail, applicant shall restrain from his entering Jiwati Taluka, Distt.Chadnrapur, except for attending Police Station as aforesaid, pending trial, and shall not tamper with the prosecution witnesses in any manner.

JUDGE

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