

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

CRIMINAL APPLICATION (BA) NO.26 OF 2017
(Prakash @ Pankaj s/o Gopal Verulkar 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 H.R. Dhumale, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 27, 2017

This application is filed by one of the accused
in Crime No.283/2016 registered under Section 302
read with Section 34 of Indian Penal Code.

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

Shri Daga, learned Counsel for applicant, has
submitted that as per report lodged by wife of deceased,
who is also an eye witness, involvement of applicant is
only by way of his assault upon deceased by iron pipe.
Name of one Gauri, daughter of complainant, is also
revealed in the statement and by referring to statement
of Gauri, applicant's involvement is said to be by way of
assault on deceased by iron pipe. It is contended that
according to the case of prosecution, due to strained
relations on account of distribution of agricultural land,
deceased, who was husband of complainant and brother
of applicant, came to be assaulted by co-accused, i.e. his

father by axe. It is further submitted by referring to the report as well as to the statement of Gauri that since the assault by axe is by co-accused father on neck of the deceased and applicant since is attributed with assault by iron pipe, the present application is liable to be allowed in view of the post mortem notes wherein cause of death is stated to be due to injuries to neck. It is also contended that from the document filed along with the charge-sheet being query to Medical Officer, General Hospital, Khamgaon, he has specifically stated that injuries stated in the post mortem report are not possible by the hollow metal rod of 4 feet length and 2 cm in diameter. In the light of above facts, application is prayed to be allowed.

Shri Dhumale, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that applicant shared common intention with co-accused father and in view of available material on record as aforesaid, application is prayed to be rejected.

In the light of submissions advanced by both sides, on perusal of report lodged by complainant Urmila, applicant is attributed of assault upon deceased by iron pipe while deceased is stated to be assaulted by co-accused father by axe on his neck. Similar is the statement of Gauri. On perusal of post mortem notes, deceased is said to have sustained 11 incised wounds and probable cause of death is stated to be due to multiple injuries on neck. Admittedly, no injuries sustained by deceased on neck are attributed to

applicant, but he is attributed of assault upon deceased by metal pipe. On perusal of query made by Investigating Officer to Medical Officer, it is revealed that Medical Officer in clear terms has certified that none of the injuries mentioned in the post mortem report can be caused by weapon metal rod with 4 feet length and 2 cm in diameter. Admittedly, one weapon iron pipe is seized at the instance of applicant, which is of above dimension. In that view of the matter, application is liable to be allowed as it is not the case of prosecution that applicant has criminal antecedents. Hence, the following order :

The applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- with one surety in like amount. Applicant shall mark his presence with Police Station, Khamgaon (City), District Buldhana once in three months pending trial. Applicant shall not enter the territorial limits of village Sutala Khurd, Tahsil Khamgaon, District Buldhana pending trial. The criminal application is accordingly allowed.

JUDGE

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