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

CRIMINAL APPLICATION (BA) NO.27 OF 2017

Vishal Himmatrao Gawai
.vs..
State of Maharashtra, through P.S.O. Barshitakli, District Akola

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

Shri J.B. Gandhi, Counsel for the applicant.
Shri A.V. Palshikar, Addll.P.P. for the State.

CORAM : P.N. DESHMUKH, J.
DATED : MARCH 20, 2017.

This application is filed by one of accused involved in Crime No.35 of 2015 registered for the offences punishable under Sections 307, 504, and 34 of the Indian Penal Code.

It appears that earlier application being Criminal Application No.689 of 2016 was allowed to be withdrawn by this Court by its order dated 15.9.2016 after hearing the same for some time with liberty in favour of applicant to file an application for bail after three months, if there is no progress in Trial. Admittedly, Trial is not yet commenced. Hence, present application is filed, which is duly considered in view of liberty granted by this Court as aforesaid.

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

Perused affidavit-in-reply and charge-sheet.

Learned counsel for the applicant submits that co-accused Yuvraj is already released on bail by this Court though case of said co-accused and applicant is similar and has further contended that as applicant is a student and is in custody since 18.9.2015 and has no criminal antecedent to his credit, be released on bail as there is no purpose in keeping applicant behind bars as the Trial is not yet commenced though charge-sheet is filed on 16.11.2015 and has thus prayed that application be allowed.

Learned Additional Public Prosecutor opposed the application as per its affidavit-in-reply on record and has submitted that there is direct evidence against applicant of his brother who is complainant, and of independent witnesses and thus submitted that application is liable to be rejected as statements of eyewitnesses corroborated with medical evidence. It is further contended that case of applicant is not similar to that of co-accused Yuvraj.

In the background of submissions advanced as aforesaid, this Court while releasing co-accused Yuvraj, by its order dated 15.3.2016, has noted that accusations against said accused are that he along with co-accused i.e. present applicant committed assault on victim and on considering nature of assault found co-accused Yuvraj to be entitled for bail.

In the background of observations as aforesaid, perusal of report lodged by Duryodhan Gavai, brother of victim, reveals that prior to assault, there was quarrel and abuses between applicant and co-accused persons along with injured and in the course of said transaction, applicant, co-accused, and one unknown person, who was sitting in the car, started assault when applicant shouted to co-accused to catch hands of victim and with iron rod he committed assault on his head and on face.

From the contents of report it is thus found that assault on head and on face is committed by applicant while role attributed to co-accused Yuvraj is of his instigating applicant to hold hands of victim. It, therefore, appears that this Court while considering application for bail of co-accused Yuvraj, had found that he is not an author of any of injuries sustained by injured, but from contents of report it is found that it is applicant who assaulted on head and on face of injured Shuddhodhan.

Contents of report are found duly corroborated by statement of Shuddhodhan, the injured, Zingaji Athaole, Vinod Bodade, Sahdeo Wankhade, and Sanjay Gavai. Moreover, medical evidence finds fully corroborated with statements of eyewitnesses according to which injured is found who have sustained fracture on skull and was indoor patient for fourteen days.

In view of facts as aforesaid, as no case is made out on the ground of parity and even on merits, application is liable to be rejected, however considering young age of applicant and as he is stated to be a student and has no criminal antecedent to his credit, following order is passed in the interest of justice:

Application is rejected.

Learned Trial Judge, who is ceased with sessions case arising out Crime No.35 of 2015 registered by Barshitakli Police Station, District Akola, to make an endeavour to conclude the Trial within a period of three months from the date of framing of charge.

Needless to say that observations as aforesaid are *prima facie* and learned Trial Judge shall not get influenced with the same and shall independently evaluate the evidence at the time of Trial.

Application stands disposed of accordingly.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

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