

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

CRIMINAL APPLICATION (BA) NO.43 OF 2017.

Guddukumar @ Guddu Laxman Katre
..VS..
The State of Mah, thr.PSO,P.S., Wadi, Nagpur.

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

Mr.S.N.Bawangade, Adv. for the applicant.
Mr.S.S.Doifode, APP for the State.

CORAM : P.N. DESHMUKH, J.
DATE : 14th FEBRUARY, 2017.

1. This is an application for grant of bail filed by one of the accused involved in Crime No.973 of 2016, registered at Police Station Wadi for the offence punishable under Sections 302, 201, 143, 147, 149 of the Indian Penal Code.
2. Heard learned counsel for the applicant and learned Additional Public Prosecutor for the State.
3. It is submitted on behalf of the applicant that though there are statements of eyewitnesses, none of those statements establishes any overt act by applicant. It is submitted that the statements simply establish presence of applicant at the time of incident. The learned counsel has further submitted that from the statement of one Manoj Bhade it reveals that he has seen injured along with co-accused and one person sitting as pillion

rider who is identified to be as applicant but has submitted that there is nothing to establish that the pillion rider is applicant and nobody else.

4. By referring to the statements of Mangesh Shende, Nisha, wife of Mangesh Shende, and Manoj Bhade it is contended that though all these witnesses claimed to be residing near the house of deceased as well as of applicant, they did not find it necessary to disclose about the assault alleged to have witnessed by them, from the date of incident which is 26th September, 2016 till their statements are recorded after 5 to 7 days. It is, therefore, contended that application be allowed as all these alleged eyewitnesses are got up witnesses.

5. Learned Additional Public Prosecutor opposed the application as per reply filed on record and has submitted that there is direct evidence establishing involvement of applicant by assaulting deceased along with co-accused. By referring to the statement of Mangesh Shende it is contended that he has attributed applicant as an assailant of deceased by stone. It is further contended that injuries sustained by deceased, according to the eyewitnesses account, are corroborated with injuries mentioned in the postmortem report and has therefore stated that as there is direct evidence, application be rejected as involvement of applicant is also established as he is identified by complainant as well as Manoj Bhade in the Test Identification Parade. Learned Additional Public Prosecutor, however, has admitted that after holding Test Identification Parade, no further

statement of Manoj Bhade is recorded.

6. In the background of submissions advanced as aforesaid, on perusal of report it reveals that same is lodged by brother of deceased stating therein that since 26th September, 2016 as deceased was found missing, his sister Shahanaj, on 29th September, 2016, lodged a missing report. Thereafter on 30th September, 2016 when complainant was present in his house he was informed by one unknown person about a dead body floating in Government Well which was in open space. The complainant accordingly visited the spot and identified it to be of his brother deceased Salim and reported the matter to police. After the last rites were performed, it is stated that Mangesh Shende visited complainant and informed that on 26th September, 2016 he had witnessed assault upon his deceased brother by stone at the hands of applicant and other co-accused by manhandling him by fists and kick blows.

7. Statement of Mangesh Shende corroborates version of complainant about his witnessing incident of assault upon deceased by applicant and co-accused. He in clear terms has stated that the applicant had assaulted deceased by stone on his face along with other co-accused, one after another. Similar is the statement of Nisha, wife of Mangesh, who at the material time had accompanied Mangesh as they were proceeding from the spot. Statements of these eyewitnesses thus establish involvement of applicant as one of the assailants of deceased. Submission made on behalf of applicant about Mangesh and

Nisha not disclosing said incident till their statements are recorded on 1st October, 2016, does not inspire any weight in view of the fact that as per report it is only on 30th September, 2016 after the dead body was recovered and same was identified by complainant to be that of his deceased brother Salim, Mangesh by visiting house of complainant had informed him about the incident of 26th September, 2016. In that view of the matter, at this stage, I do not find it appropriate to go into that aspect of the case. However, from the statements of eyewitnesses Mangesh, Nisha and Manoj Bhade, prima facie, it is found that the applicant is one of the assailants of deceased.

8. Learned Additional Public Prosecutor, on instructions, makes a statement that one stone is seized during the course of investigation from the spot which is weighing about 7 kgs. having blood stains, however, C.A. report is yet to be received. From the statement of Manoj Bhade it is found that in the night of 26th September, 2016 when he was proceeding on his two wheeler, one motorcycle crossed him and as the vehicles were slowed down while passing through speed-breaker, he could identify that same was driven by co-accused Akash Narnaware, while one injured was sitting in between Akash and pillion rider. No name of pillion rider is stated in his statement however in the Test Identification Parade held during the course of investigation, he has identified applicant to be as pillion rider. At this stage, prima facie it can be held that person identified by Manoj Bhade is applicant.

9. In view of facts as aforesaid, only thing which falls in favour of applicant is about delay in recording statements of eyewitnesses, however, as said earlier, since on 30th September, 2016 Mangesh Shende for the first time informed about incident to complainant Akbar Shaikh, it cannot be said that they are got up witnesses. In that view of the matter, as prim facie applicant is found involved in the crime, application is liable to be rejected. The same is accordingly rejected.

JUDGE

chute