

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

CRIMINAL APPLICATION (BA) NO.67 OF 2017

(Mohammad Wasim s/o Mohammad Rauf Ansari 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 A.K. Bhangde, Advocate for applicant.

Shri N.B. Jawade, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 21, 2017

One of the accused involved in Crime No.341/2014 registered for the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code, Section 135 of Mumbai Police Act and Section 4/25 of Arms Act has filed this application for bail

Shri Jawade, learned Additional Public Prosecutor for respondent, has pointed out that learned Sessions Court while rejecting application of applicant for bail on 19/12/2016 has expedited trial and accordingly charge is framed.

Heard learned Counsel for both sides.

Shri Bhangde, learned Counsel for applicant, has submitted that case of prosecution is based on circumstantial evidence and co-accused Sheikh Salim is already released on bail by this Court. It is contended that statements of eye witnesses relied by prosecution do not establish involvement of applicant as assailant of deceased Sheru or that it is the applicant, who had

caused injuries to deceased Sheru, which proved to be fatal. It is further contended that even if trial is likely to commence by recording evidence of witnesses, that by itself would be no impediment for not considering the present application for bail on merits. It is, therefore, prayed that application be allowed.

Shri Jawade, learned Additional Public Prosecutor for respondent, has contended that case of prosecution is based on theory of last seen together and from the statements of eye witnesses on record, it can clearly be established that death of Sheru is an outcome of assault by applicant and co-accused upon him, who was found in their company immediately prior to finding of his dead body. It is, therefore, contended that no case is made out on parity nor on merits as case of applicant differs from that of co-accused Sheikh Salim, who is released on bail.

In the background of submissions advanced as aforesaid, on perusal of report by Police Officer, it is revealed that offence is registered against unknown persons on finding one dead body lying near factory at Tipu Sultan Chowk having head injuries found on the same. The report further reveals that as per the medical opinion, death was stated to be caused due to head injuries sustained by deceased and thus, offence came to be registered against unknown persons.

It appears that during the course of investigation, statements of two eye witnesses are recorded. This Court while considering bail application of co-accused Sheikh Salim has held that said statements

are dated 26/12/2014 while incident is alleged to have taken place on 19/12/2014. It was further observed that witness Manohar Kamble in his statement has stated that he had seen three persons getting down from auto-rickshaw and were quarreling with one person and then assaulting him. It is noted that said eye witness, however, does not name any of the assailants as he does not know their names nor has disclosed the name of person upon whom assault was committed by them and in the background of above statement, this Court had observed that it was necessary to conduct test identification parade so as to enable said witness to identify the assailants. However, admittedly, no test identification parade is held.

In that view of the matter, statement of Manohar Kamble does not lead the case of prosecution in any way. This fact is not disputed even by learned Additional Public Prosecutor, who has however relied upon statement of Parvej Khan, contending that from his statement, involvement of applicant along with co-accused is clearly established as assailant of deceased Sheru in the incident, which took place on 19/12/2014 at 7 p.m. and by referring to the contents of the report has co-related death of Sheru stating that his dead body was found immediately on the following day in the morning and as such, involvement of applicant on the basis of theory of last seen together is clearly established.

In view of submissions advanced on behalf of prosecution, it is material to note that statement of

Parvej Khan is recorded on 7/1/2015, i.e. almost 15 days after the incident and is the only statement establishing case of prosecution based on theory of last seen together.

Law so far as theory of last seen together is well established. It is settled principle of law that the Court has to apply the theory of "last seen together" cautiously and unless there is corroborating and circumstantial evidence that does not by itself necessarily lead to the inference that it was the accused, who committed the crime.

Having considered facts as aforesaid and since from the documents filed with the charge-sheet, there is no direct evidence established against applicant, the criminal 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.25,000/- with one surety in like amount. While on bail, applicant shall not reside within Corporation limits of Nagpur city. Applicant shall mark his presence with Police Station within whose jurisdiction he prefers to stay pending trial once in a week, i.e. on Sunday between 10 a.m. and 1 p.m. Applicant shall give proof of his residential address to Police Station, Yashodhara Nagar, Nagpur and Police Station within whose jurisdiction he would prefer to reside pending trial.

Applicant shall attend trial Court without fail and shall not make any attempt to tamper with prosecution witnesses, which shall result into

cancellation of his bail.

The trial Court shall not get influenced by the aforesaid observations and shall evaluate the evidence independently at the time of trial.

The criminal application is accordingly allowed.

JUDGE

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