

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

CRIMINAL APPLICATION (ABA) NO.46 OF 2017
(Sayed Zahir Syed Razzak and another 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 V.D. Darne, Advocate for applicants.

Shri N.H. Joshi, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 10, 2017

Both applicants apprehending their arrest in
Crime No.451/2016 registered by Babhulgaon Police
Station under Section 302 read with Section 34 of Indian
Penal Code have applied for anticipatory bail.

Shri Darne, learned Counsel for applicants,
has submitted that according to prosecution's reply,
incident took place on 11/12/2016 at about 9.30 a.m.
when deceased Ganesh was assaulted by four persons,
who are named in the first information report and
admitted dead in the Hospital. It is contended that
involvement of applicants is only on the basis of
subsequent statement of complainant recorded under
Section 164 of Code of Criminal Procedure after eight
days of incident wherein applicants are involved as
conspirators. It is submitted that except for above,
nothing is revealed against applicants during
investigation. It is also contended that from the report
lodged by father of deceased, it appears that relations of

deceased Ganesh were not cordial with some other persons and, therefore, he came to be assaulted. It is submitted that applicant no.1 since met with an accident in December 2016 is continuously under medical treatment and as there is no evidence against applicants, application be allowed by imposing suitable conditions.

Shri Joshi, learned Additional Public Prosecutor for respondent, has opposed the application as per reply on record. However, he has not disputed that relations between applicants and deceased Ganesh were strained. It is submitted that applicants were in relations with co-accused.

From the report it is revealed that on 11/12/2016 at 9.30 a.m. deceased Ganesh when accompanied his father to Babhulgaon Bus Stand to receive guests, assault was committed on him by co-accused Sheikh Jameer alias Jambya and Salim Pathan alias Golu by iron rod and knife respectively. Involvement of other two accused named in the first information report, namely, Shahrukh Pathan and Liyakant Khan alias Monu is about their being present on the spot and leaving with co-accused named above. Admittedly, no names of applicants are mentioned therein. From the report it is found that in fact relations between deceased and four accused named in the first information report were strained prior to incident, about which deceased had already lodged a report with Babhulgaon Police Station. It, therefore, appears that relations between co-accused and deceased were strained.

Involvement of applicants is found only on the basis of statement recorded under Section 164 of Code of Criminal Procedure eight days after the incident wherein complainant has stated that incident is conspired by both the applicants. Except for this, there is no evidence against applicants. Moreover, from the medical evidence, it is found that applicant no.1 has sustained fracture of shaft femur right side with minimally displaced fracture neck femur right side and was taking treatment in a Hospital at Sevagram since December 2016. In that view of the matter, though investigation is in progress, application is liable to be allowed by imposing suitable conditions as per order below :

In the event of arrest of applicants in Crime No.451/2016, they shall be released on bail on their executing P.R. Bonds in the sum of Rs.25,000/- each with one surety each in like amount. While on bail, applicants shall attend Babhulgaon Police Station for a period of eight days from 13/2/2017 between 10 a.m. and 3 p.m. and thereafter as and when called. Applicants shall furnish proof of their residential address to Investigating Officer and shall update the same in the event of any change therein. The criminal application is accordingly allowed.

JUDGE