

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

CRIMINAL APPLICATION (BA) NO.85 OF 2017

Dyaneshwar @ Jago s/o Gulab Amborkar

..VS..

The State of Maharashtra, through P.S.O., P.S. Durgapur, Tahsil and District
Chandrapur

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

Court's or Judge's Order

Shri S.O. Ahmed, Counsel for the Applicant.
Shri A.M. Deshpande, Addl.P.P. for the State.

CORAM : P.N. DESHMUKH, J.
DATED : MARCH 2, 2017.

This application is filed for bail by accused involved in Crime No.220 of 2016 registered for the offences punishable under Sections 307 and 109 read with Section 34 of the Indian Penal Code.

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

Learned counsel for the applicant has submitted that there is no evidence to establish involvement of applicant in the present crime and that as investigation is complete, he be released on bail as even in the F.I.R. no name of applicant is mentioned but is referred as son of Gulab and it is no case that Gulab has only one son. It is, therefore, contended that in the absence of any other evidence against applicant, application be allowed.

Learned Additional Public Prosecutor opposed the application and with reference to contents of report has referred two statements of witnesses namely Gangubai Buddharthiwar and Dilip Bawane and has contended that these eyewitnesses have specifically implicated applicant as assailant of injured and has thus contended that though in the F.I.R. reference is of son of Gulab, statements of these two witnesses clarify that son of Gulab referred in the report is applicant. It is, therefore, prayed that application be rejected.

In the light of submissions advanced as aforesaid, report reveals that same is lodged by injured on 21.7.2016 stating on that day at 10:00 to 10:30 a.m., when he was present at pan shop of Dilip Bawane, co-accused Prabhu, his wife, daughter, and son started abusing him and in the course of same transaction co-accused Prabhu called co-accused Gulab and his son who immediately arrived when son of Gulab gave knife blow in the abdomen of complainant due to which he fell down on sustaining bleeding injury. The role attributed to son of Gulab is thus specific about his stabbing by knife in the abdomen of complainant while role attributed to co-accused Prabhu, his wife, daughter, son, and Gulab is general about their manhandling complainant by fist blows and kick blows.

In view of above facts, co-accused are found to be released on bail by this Court, however

involvement of applicant as aforesaid is specific about his assaulting complainant by knife. The only point which needs consideration is, if there is any evidence on record to establish if son of Gulab referred in F.I.R., is applicant alone. For that purpose, on perusal of statement of Gangubai involvement of applicant is clearly found established when she has specifically stated that on hearing shouts of quarrel, when she went on the spot, she had witnessed applicant committing assault by knife in the stomach of complainant and had in fact told him not to further commit assault else complainant would die. She has also attributed presence of Dilip referring him as Dilip Panthelewala. Presence of Dilip is also natural on the spot as according to complainant, at the time of incident, he had visited Dilip Panwala where incident took place.

Statement of Dilip corroborates statement of Gangubai thereby establishing involvement of applicant as assailant. Statements of these two witnesses thus remove doubt in the contents of report whether assailant is referred as son of Gulab.

Statements of both these eyewitnesses are fully corroborated with the medical evidence when on his examination at General Hospital at Chandrapur, complainant is certified to have sustained four injuries out of which two are of incised wounds on his abdomen below umbilicus which are grievous injuries possibly by

sharp cutter.

In view of above discussed facts, application is liable to be rejected. However, from the contents of paragraph No.11 of the application since it reveals that applicant is a student studying in 12th class having no criminal antecedents and thus is in jail and as such if is continued to be behind bar for a long period, there is every possibility of his career being frustrated who in fact was to appear for the ensuing 12th standard examination.

In that view of the matter and as charge-sheet in the present crime is filed on 18.10.2016, following order is passed.

Application is rejected.

Learned Trial Judge who is ceased with the trial arising out Crime No.220 of 2016 shall expedite the same and shall make an endeavour to decide it within a period of six months from the date of framing of charge.

Needless to say that prosecution shall extend its co-operation for early disposal of the 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.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 6/3/2017