

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

CRIMINAL APPLICATION (BA) NO.119 OF 2017
(Gaurav s/o Dharmendra Raut 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 P.P. Kotwal, Advocate for applicant.

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

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 16, 2017

This is an application for bail by accused in
Crime No.156/2016 registered under Sections 307 and
397 read with Section 34 of Indian Penal Code.

Shri Kotwal, learned Counsel for applicant,
has submitted that co-accused Mangesh is granted bail
by this Court vide order dated 1/2/2017 and role
attributed to applicant and co-accused is similar. It is
contended that even considering the documents on
record, which are in the form of statements of injured
complainant, Pradeep and Mayur, they are not consistent
with each other and though according to injury
certificate, grievous injuries are stated to have been
sustained by Pradeep, application be allowed as
investigation is complete and charge-sheet is filed.

Shri Jawade, learned Additional Public
Prosecutor for respondent, has opposed the application
as per reply on record and submitted that there is direct
evidence establishing involvement of applicant as an

assailant. It is, therefore, prayed that application be rejected.

In the background of submissions as aforesaid, it is noted that report came to be lodged by Arun wherein he has stated that while he was proceeding on motor-cycle, he was intercepted by two unknown persons, who snatched away his two wheeler, however, they could not flee away with the vehicle since it got stuck in mud. In the meantime, complainant informed this fact to his master, namely, Pradeep, who arrived along with Mayur on spot. It is further stated that while complainant, Pradeep and Mayur started searching for two unknown suspects, they were found hiding near Parley Company and when complainant and two others went near them, they assaulted Pradeep, Mayur and complainant Arun. It is specifically stated that Pradeep was assaulted on his abdomen, Mayur on chest and complainant Arun on head and thigh.

In view of contents of report as aforesaid, it is noted that assault is committed on Pradeep, Mayur and complainant by two unknown persons, whose names are subsequently revealed. Similarly, perusal of statement of injured Pradeep shows that two persons having knives in their hands committed assault upon him and when Mayur intervened in the assault, he was also assaulted by knife. Pradeep has not stated as to where he was assaulted nor as to where Mayur was assaulted.

Statement of Mayur when perused, it is revealed that he has implicated only one assailant as it is stated that one person, who was wearing black coloured

Jean committed assault by knife on Pradeep, who is referred as his maternal Uncle, on his chest and claims that same person also assaulted him on his wrist, left side chest and other parts of body by knife. However, he also claims that after said person committed assault on Pradeep, complainant Arun assaulted him (assailant of Pradeep) on his head by stick.

In view of his statement as aforesaid, possibility of assault upon Mayur by the person, who is assaulted on his head by complainant, does not appear to be convincing.

In the background of statements of injured Arun, Pradeep and Mayur, since there appears inconsistencies therein and from the injury report of Pradeep, who is found to have sustained injuries on his abdomen and forehead, which are stated to be grievous and other simple injuries, there is nothing to establish as to which of the assailants is author of the same. Similarly from the injury certificates of complainant Arun and another injured Mayur, both of them are stated to have sustained simple injuries.

Having considered aforesaid inconsistencies in the evidence of injured witnesses and the injuries sustained by Pradeep, who is silent in his statement as to who has caused the same as his statement does not reveal as to on what part of body assailant has committed assault by knife, though injuries sustained by Pradeep are stated to be grievous as aforesaid, since at this stage it is not clear if applicant is responsible for causing said injuries and as co-accused is already

released on bail by this Court, application is liable to be allowed as investigation is complete, 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. Applicant shall mark his presence with Police Station, Mouda, District Nagpur on 15th day of each month pending trial.

Needless to say that learned Sessions Court shall not get influenced with the observations as above and shall independently evaluate the evidence at the time of trial.

The criminal application is accordingly allowed.

JUDGE

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