

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

CRIMINAL APPLICATION (BA) NO.189 OF 2017

Nilesh s/o Laxman Shrinath

..VS..

State of Maharashtra, through P.S.O. City Kotwali, Tahsil Akola, District Akola

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

Court's or Judge's Order

Shri S.V. Sirpurkar, Counsel for the applicant.
Shri S.S. Doifode, Addl.P.P. for the State.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 24, 2017.

One of accused involved in Crime No.2 of 2017 registered for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code has filed this application for bail.

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

Learned counsel for the applicant has submitted that no involvement of applicant can be established from report nor from statement of injured Ganesh recorded under Section 164 of the Code of Criminal Procedure and has, therefore, submitted that applicant since is arrested merely on finding present on spot, he be released on bail though investigation is in progress as there is no sufficient evidence to curtail his liberty.

Learned Additional Public Prosecutor opposed the application as per its reply on record, however did not dispute that except for presence of applicant on spot, no overt act is attributed to him either in report or by injured, Ganesh.

On earlier date of hearing, in view of submissions made on behalf of applicant that injured, Ganesh in his statement recorded under Section 164 of the Code of Criminal Procedure has absolved applicant, learned Additional Public Prosecutor, on instructions, makes statement that though injured Ganesh has not absolved applicant totally in his statement recorded under Section 164 of the Code of Criminal Procedure, has only attributed presence of applicant.

Report is lodged by Trilok Jagdish Sharma in respect of incident dated 4.1.2017 stating that on that day injured Ganesh, his younger brother was subjected to assault by four persons opposite to Latest Service Centre and has named co-accused Bhola Gore, Babulal Shukla, and two unknown persons. Bhola is attributed of assault by tile in his hand while Babu by stump. Two unknown persons are attributed with sharp edged weapon.

Injured Ganesh in his statement recorded under Section 161 of the Code of Criminal Procedure on 8.1.2017 has attributed applicant to have abused him and to have caught hold of him when co-accused Bhola

is stated to have assaulted by knife. Injured Ganesh, however in his statement recorded under Section 164 of the Code of Criminal Procedure on 18.2.2017 had not attributed any such act to applicant Nilesch except for stating that he was present on spot along with co-accused. In view of material inconsistencies in statements of injured Ganesh as aforesaid and also considering the fact that as per contents of report, Bhola is attributed having tile in his hand while injured Ganesh in his statement had stated that co-accused Bhola committed assault by knife on his stomach, application is liable to be allowed as even otherwise it is found that applicant's involvement is only by way of his being present on spot, hence following order:

Applicant shall be released on bail on his executing a P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

While on bail, applicant shall attend Police Station City Kotwali, Tahil Akola, District Akola on every Sunday between 10:00 a.m. and 3:00 p.m., till filing of charge-sheet and shall submit proof of his residence and shall update the same, in the event of change of address in future.

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 :- 31/3/2017