

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

CRIMINAL APPLICATION (ABA) NO.114 OF 2017
(Sheikh Firoz @ Dillu s/o Sheikh Sabbir vs. 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.K. Bezalwar, Advocate for applicant.
Shri I.J. Damle, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 20, 2017

This application is filed for anticipatory bail in Crime No.275/2016 registered under Sections 307, 324, 143, 147, 148 and 504 of Indian Penal Code by Police Station, Lakadganj, Nagpur.

Shri Bezalwar, learned Counsel for applicant, has submitted that charge-sheet in this case is filed and according to case of prosecution, assault upon complainant Rahul Sakore is by group of persons and as such, there is nothing to establish as to who is author of injuries sustained by complainant on his cheek and below right leg and by injured Dheeraj on his back as stated in the report. It is contended that since investigation is complete and knife is already recovered from co-accused Sheru, custodial interrogation of applicant is not necessary and, therefore, application be allowed.

Shri Damle, learned Additional Public

Prosecutor for respondent has opposed the application as per reply. It is submitted that there is direct involvement of applicant established by statement of eye witness Pankaj and his statement is corroborated by medical evidence and, therefore, application be rejected. However, learned Additional Public Prosecutor has not disputed the fact of filing of charge-sheet in this case.

In view of submissions advanced as aforesaid, it is found that on 22/9/2016 Rahul lodged report against Sheru Kalya and his brother alleging assault by them on his cheek and right leg and on Dheeraj by brother of Sheru Kalya. During the course of hearing, learned Additional Public Prosecutor has conceded that there is no statement establishing that brother of Sheru Kalya referred in the report is applicant Sheikh Firoz alias Dillu s/o Sheikh Sabbir.

In the background of facts as aforesaid, perusal of statement of Vicky, who is named in the report, reveals that he is not an eye witness to the incident as he has stated that on 21/9/2016 at 10.20 p.m. while he was present near Subhash statue along with Dheeraj, Rahul and one Suraj Ganar, all of a sudden co-accused Sheru and his brother along with many other boys came and started manhandling Dheeraj by kick blows and one amongst them on the point of knife, threatened Vicky not to interfere, due to which he remained at some distance. He has further stated that co-accused Sheru and other persons, who had come with him, assaulted Dheeraj and ran away from the spot and he found Dheeraj had sustained bleeding injuries on his

chest and back. Rest of his statement is hearsay.

From the statement of Vicky as such, it is found that no involvement of applicant is established. Similar are the statements of Suraj Ganar and Satish.

Statement of Pankaj, to some extent, establishes involvement of a person, who is stated as brother of Sheru, who is stated to have committed assault on Dheeraj on his back by knife and on cheeks and on back side of complainant Rahul. However, as already stated aforesaid and conceded by learned Additional Public Prosecutor, there is nothing on record to establish applicant as brother of Sheru.

Having considered statements of witnesses relied by prosecution as aforesaid, though from the injury reports of Dheeraj as well as Rahul, they are found to have sustained injuries on back and on right gluteal region respectively, which are certified to be grievous, there is nothing to establish that applicant is author of injuries sustained by Dheeraj and complainant Rahul.

Considering the fact that investigation is complete and knife is seized from co-accused, criminal application is liable to be allowed as per order below :

In the event of arrest of applicant in Crime No.275/2016, he shall be released on bail on his executing a P.R. bond in the sum of Rs.20,000/- with one surety in like amount. Applicant shall mark his presence with Police Station, Lakadganj, Nagpur on the 15th day of each month initially for a period of six months and thereafter on the first day of every three

months pending trial.

The criminal application is accordingly
allowed.

JUDGE

khj