

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

CRIMINAL APPLICATION (BA) NO.234 OF 2017

(Tukaram s/o Vitthalrao Dhoke and others ..vs.. State of Maharashtra, through PSO, PS Manora,
District Washim)

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

Court's or Judge's orders

Shri R.M. Daga, Advocate for the applicant,
Mrs. Kalyani Deshpande, Addl.P.P. for the non-applicant,
Ms. Nisha Gajbhiye, Advocate for the intervenor.

CORAM : S.B. SHUKRE, J.
DATED : 25-04-2017

Criminal Application No.722/2017.

Heard.

For the reasons stated in the application, the
application is allowed and leave to assist the prosecution
is granted.

Criminal Application (BA) No.234/2017.

Heard.

Perused the first information report, reply of the
prosecution and the charge-sheet.

There is no admissible evidence regarding the
applicants having been lastly seen in the company of
deceased. Statements of the accused in this regard are
there. But, they are not admissible in evidence. One
does not understand as to on what basis, the learned
Additional Sessions Judge has observed in his order
dated 31-01-2017, while rejecting the bail application of

the applicants that there is evidence about the applicants having lastly gone alongwith deceased on 25-05-2016. This observation appears to be not based on material available on record. There is recovery of one rope at the instance of applicant No.2-Tushar. As far the other applicants, there is no recovery effected from them. Mere recovery of an article like the rope in the present case, by itself, could not be sufficient to *prima facie* hold that the applicants have something to do with the crime alleged against them. The applicants are in jail since 12-09-2016. The trial is yet to commence. Therefore, I am inclined that now the applicants deserve to be released on bail.

Of course the learned Additional Public Prosecutor for the non-applicant has opposed this application contending that there is some recovery of incriminating articles from these applicants. I have already dealt with this aspect of the matter and made my *prima facie* inference accordingly in the earlier paragraph. For the same reason, the contention cannot be accepted.

The application is allowed and it is directed that the applicants be released on bail in Crime No.141/2016 registered with Police Station Manora, District Washim for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code on each of

them furnishing P.R. Bond of Rs.20,000/- together with one solvent surety in the like amount, on the following conditions :

- (i) The applicants shall regularly attend the dates fixed by the Court and shall co-operate with the trial Court in expeditious disposal of the trial.
- (ii) The applicants shall not tamper with the prosecution evidence in any manner.

JUDGE

adgokar