

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

CRI. APPLICATION (BA) NO. 337 OF 2017

(MANOJ SUDHAKAR SAHARE...VS.. STATE OF MAH. THR. P.S.O. IMAMWADA, NAGPUR)

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

Court's or Judge's orders

Shri C.B.Barve, Advocate for Applicant.
Shri A.D.Sonak, A.P.P. for Non-applicant.

CORAM : Z.A.HAQ, J.

DATED : JUNE 19, 2017.

Heard.

The applicant is arrested on 12th October, 2015 in crime registered against him and other accused for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act. According to the Investigating Agency, being agitated by the incident which occurred on 11th October, 2015 at about 4.00 p.m. all the accused went to the house of the complainant at about 11.30 p.m. with weapons and assaulted the complainant Badal Gajbhiye and his father Raju Gajbhiye. According to the Investigating Agency Raju Gajbhiye died because of the injuries suffered by him and complainant Badal Gajbhiye also suffered three injuries.

The learned advocate for the applicant has submitted that the applicant is aged about 23 years and because of the false implication his future will be ruined. It

is argued that the investigation is complete and charge-sheet is filed and the Investigating Agency has not shown recovery of any weapon from the applicant. It is argued that when police reached the spot, mother of the complainant (wife of the deceased) was found on the spot and her statement came to be recorded, however, it is unexplained why the first information report is not registered on the basis of her statement and why first information report is registered on the complaint of Badal Gajbhiye. From the final report submitted by the Investigating Agency it is pointed out that first information report is prepared by putting wrong time which is clear from the overwriting on the entries regarding time of occurrence of offence and information received at the Police Station and from the fact that the column showing time and date of dispatch to the Court is blank.

Reliance is placed on the judgment given in the case of *Ganesh Bhavan Patel ..vs.. State of Maharashtra*, reported in **AIR 1979 SC 135** and the judgment given in the case of *Bhajan Singh Vs. State of Haryana*, reported in **(2011) 7 SCC 421** to argue that if the Investigating Agency / prosecution fails to explain the delay in lodging of F.I.R. or if it appears that F.I.R. is ante-time then there cannot be conviction of the accused in such cases.

The application is opposed on the ground that the applicant is habitual offender and till now 8 crimes (including present one) are registered against him, which are as follows:

Sr. No.	Crime No.	Sections
I)	152/2010	380 of Indian Penal Code
ii)	151/2010	380 of Indian Penal Code
iii)	3099/2013	4/25 Arms Act and 135 of the Maharashtra Police Act.
iv)	396/2013	324, 34 of the Indian Penal Code
v)	377/2014	324, 504, 34 of Indian Penal Code
vi)	155/2015	143, 147, 148, 149, 307, 302 of Indian Penal Code.
vii)	19/2015	110 EG Cr. P.C.

The learned advocate for the applicant has submitted that out of above crimes registered against the applicant he is acquitted in 4 crimes.

Considering the statement of the complainant who has suffered 3 injuries (though the injuries are minor), the fact that deceased Raju Gajbhiye had 31 injuries on his body and the past record of the applicant, I am not inclined to grant prayer made in the application.

The application is **dismissed**.

JUDGE