

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

CRIMINAL APPLICATION (BA) NO.417 OF 2017
(Satish s/o Vitthalrao Chafle 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 R.M. Daga, Advocate for applicant.
Mrs. S.S. Jachak, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : SEPTEMBER 18, 2017

This subsequent bail application is filed by applicant Satish Chafle, one of the co-accused in Crime No.212/2016 registered by Police Station, Girad, District Wardha for the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code. Earlier application being Criminal Application (BA) No.1045/2016 was not considered by this Court on merits as was allowed to be withdrawn.

On the earlier date, matter was heard for sometime and was adjourned on the request of learned Additional Public Prosecutor to place on record copy of Chemical Analyser's report. The said document is taken on record and copy thereof is also supplied to learned Counsel for applicant. Admittedly, according to this document, though stone is stated to be stained with human blood, blood grouping could not be done and as such, result is inconclusive. It is submitted that blood

group of applicant/accused is "A", as such this document by itself is too short to establish involvement of applicant on this count, who, according to prosecution, has committed assault on deceased Kawadu Chafle by stone. Perusal of Chemical Analyser's report also reveals that there is no mention of weight of stone alleged to be used by applicant for committing assault on deceased.

In the background of Chemical Analyser's report as aforesaid, it appears that report came to be lodged by Rushila wife of younger brother of deceased on 29/5/2016 at 6 p.m. in respect of incident, which she claims to have witnessed from inside her house on 28/5/2016 at around 11 p.m. It is material to note that as per said report, she claims to have seen applicant committing assault upon deceased by stone while other co-accused are stated to have committed assault by sticks. According to complainant, she had narrated about the incident witnessed by her to her husband on his arrival at home on the following day at 9 a.m. Admittedly, report is lodged on 29/5/2016 at 6 p.m. There is no explanation put forth as to what prevented complainant or her husband to make report to Police till 6 p.m. on 29/5/2016.

Even if no much consideration is given to this aspect, on perusal of statements of Gajanan Dahake and Subhash Choudhari relied by prosecution, which are similar to each other to much extent, it is revealed that after there was fire in the cattle-shed of Vitthal Chafle, assault was committed on deceased Kawadu by sticks,

which were brought by accused no.1 Vitthal Chafle and accused no.2 Rambhau Chafle from their house while applicant is stated to have committed assault by stone. From the statements of both these witnesses, it can thus be seen that co-accused by going home, brought sticks and as such, made preparation for committing assault on deceased Kawadu, which cannot be said to be the case of applicant, who thus appears to have committed assault by stone by picking the same from spot as it is nobody's case that applicant was armed with stone at the time of incident.

Statements of Kisana Mondhe and Deorao Kshirsagar, when considered, appear to be silent on the issue of assault by applicant or by co-accused as according to their statements, they had seen all the accused carrying deceased after tying his hands and legs towards road side.

In view of the statements as aforesaid relied by prosecution to be of the eye witnesses, involvement of applicant as such is found to be of assault by stone, weight of which is found to be stated in the query made by Police during the course of investigation to Doctor to be of about 19 kgs. On considering weight of stone along with post mortem report, it is found that deceased had sustained as many as 12 injuries, out of which two were fracture injuries to both his upper and lower limbs. Though there appears four lacerated wounds on his face and scalp, admittedly there is no fracture on head. Lacerated wounds can be attributed to applicant since he was stated to be armed with stone. However, fractures,

which were on both bones of left leg and right leg on lower 1/3 and middle 1/3, could be caused by assault by sticks which, as per statements of eye witnesses as considered aforesaid, were brought by co-accused no.1 Vitthal Chafle and co-accused no.2 Rambhau Chafle from their house and thereafter they had committed assault.

Having considered involvement of applicant of committing assault by stone, which was found on spot, learned Counsel for applicant submitted that act of applicant at the most would fall within the purview of Section 325 of Indian Penal Code while applicant is in Jail from date of his arrest, i.e. 29/5/2016, which is more than one year.

Having considered facts as aforesaid and since on investigation, charge-sheet is filed, application is allowed as per order below :

ORDER

Applicant shall be released on bail on his executing a personal bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

While on bail, applicant shall mark his presence with Police Station, Girad on the first day of each month till commencement of trial and thereafter once quarterly, i.e. on the first day of each quarter till its conclusion.

Applicant shall submit poof of his residential address to Police Station, Girad and in the event of any change therein, shall inform the same to said Police Station.

Applicant shall attend trial Court on the fixed dates.

Applicant shall not tamper with the prosecution witnesses.

Learned trial Court shall not get influenced by the aforesaid observations of this Court and shall decide the trial independently .

JUDGE

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