

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

CRIMINAL APPLICATION (BA) NO. 421 OF 2017

(VISHAL CHANDRASHEKHAR DUBEY AND OTHERS...VS.. STATE OF MAH. THR. P.S.O. PS
YAVATMAL, DIST.YAVATMAL)

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

Court's or Judge's orders

Shri. Shashank V. Manohar Sr. Advocate assisted by Shri. Adwait S.
Manohar, Advocate for Applicants.
Shri. V. A. Thakre, A.P.P. for Non-applicant.
Shri. Piyush Rajurkar, Advocate for Complainant.

CORAM : Z.A.HAQ, J.

DATED : 28th JUNE, 2017.

CRIMINAL APPLICATION (APPP) NO.1044 OF 2017.

Considering the facts of the case, the complainant
Miss. Srushti Pravin Divte (daughter of deceased) is permitted
to assist the prosecution.

The Criminal application is **allowed**.

CRIMINAL APPLICATION (BA) NO.421 OF 2017.

Heard.

This application is filed by five accused, who are
arrested in crime registered against them and others for the
offences punishable under Sections 302, 364, 143, 147, 148,
149, 120-B of the Indian Penal Code and Sections 3/25 and
4/25 of the Arms Act. The crime is registered on complaint
lodged by Srushti Pravin Divte (daughter of deceased) that

her father Pravin Divte is attacked and murdered by the assailants.

According to the complainant, on 27th August, 2016 at about 9.00 a.m., it was noticed that one of the tyre of vehicle of deceased was punctured and therefore, Nishant Chapriya and Mayur Desai were sent to get the puncture repaired, that time the complainant was in the porch of the house and her father (deceased) was standing near the entrance door talking with Santosh Chormule and at that time, Monu Bajad was doing the cleaning work in office. According to the complainant, that time white coloured Scorpio, without number plate, entered the compound. Banti Jaiswal and Shyam Jaiswal were sitting in the Car. Vishal Dubey, Rohit Jadhav, Shatru and some other persons followed the Scorpio Car on two wheelers. According to the complainant, Banti Jaiswal and Shyam Jaiswal alighted from the Scorpio, Vishal Dubey hit the windshield of deceased's Car, Banti Jaiswal, Vishal Dubey and Shyam Jaiswal threw chilly powder on the face of Pravin Divte (father of complainant) and Vishal Dubey and Banti Jaiswal started firing, complainant's father fell down, the complainant started shouting and that time three of the accused threatened the complainant because of which the complainant ran to the first floor of the house. Pravin Divte succumbed to the injuries on the same day before he could be taken to hospital.

The learned advocate for the applicants has pointed out the order passed by this Court in Criminal Application (BA) No.1111 of 2016 filed by Anand @ Banti S/o Dwarkaprasad Jaiswal and has submitted that after examining the evidence available with the Investigating

Agency, this Court has doubted the claim of Investigating Agency regarding involvement of Anand @ Banti Jaiswal in commission of crime and has directed that he be released on bail. It is argued that once the claim of Investigating Agency is doubted by this Court while dealing with the application of main accused, judicial propriety requires that the present applicant should also be granted the same benefit applying the principle of parity.

Countering the submission made on behalf of the Investigating Agency that the applicant No.1 - Vishal Dubey and the applicant No.5 - Rohit Jadhav have criminal antecedents and other crimes are registered against them, the learned advocate for the applicants has submitted that only because other crimes are registered against the applicant Nos.1 and 5, their application cannot be rejected and prima facie involvement of those applicants in the present crime and the material available with the Investigating Agency against them will have to be examined by this Court. Reliance is place on the judgment given in the case of ***Maulana Mohd. Amir Rashadi ..vs.. State of U. P. and Anr., reported in 2012 AIR SCW 1048.***

The learned advocate for the applicants has also relied on the order passed by this Court in Criminal Applicant (BA) No.279 of 2017 filed by the co-accused Atul @ Montu s/o Vinod Kewarkar, order passed in Criminal Application (BA) No.280 of 2017 filed by Nitin @ Nitesh s/o Kisanrao Nighot and order passed in Criminal Application (BA) No.318 of 2017 filed by co-accused Abhishek @ Ontu s/o Ramesh Binzade, by which this Court has directed that these co-accused be released on bail.

With the assistance of learned advocate for the applicants and learned A. P. P., I have examined the First Information Report, statement of Srushti Pravin Divte and statement of Nishant, Mayur and Harish. The learned advocate for the applicants tried to point out the discrepancies in the First Information Report and the statement of Srushti Pravin Divte. He has also pointed out that Harish (puncture repairer) has not supported the claim of the complainant Srushti. I have also gone through the order passed by this Court in Criminal Applicant (BA) No.1111 of 2016 by which it is directed that co-accused Anand @ Banti Jaiswal be released on bail.

As far as the applicant No.1 – Vishal Dubey is concerned, Crime No.342 of 2013 and Crime No.119 of 2013 for the offences punishable under Sections 307, 143, 147, 148, 149 of the Indian Penal Code are registered against him and prosecution are pending. As far as the applicant No.5 – Rohit Jadhav is concerned, crime is registered against him in 2016 for the offences punishable under Sections 143, 147, 148, 149, 504 of the Indian Penal Code.

Though, while allowing the Criminal Application (BA) No.1111 of 2016, this Court has doubted the claim of the Investigating Agency, in my view, the opinion expressed by this Court in the order passed in Criminal Application (BA) No.1111 of 2016 will not be binding while considering the present application. Of course the principle of parity and judicial propriety cannot be overlooked, however, while considering the application under Section 439 of the Code of Criminal Procedure, I am required to examine whether prima facie case exists against the applicants and whether the

applicants are entitled to be released on bail. It will have to be considered that if they are released on bail, whether they will be available for trial and whether there are chances that they will jump over the bail.

The postmortem report shows that deceased had 37 injuries. The complainant, daughter of deceased, is aged about 19/20 years. The incident has taken place on the ground floor of the house where deceased resided with his family. At this stage it cannot be said that the complainant is planted witness. Two crimes are registered against the applicant No.1 - Vishal Dubey and one crime is registered against the applicant No.5 - Rohit Jadhav.

Considering the facts of the case and the accusations against the applicant Nos.1 and 5, I am not inclined to grant their application. The application of applicant No.1 – Vishal Chandrashekhar Dubey and applicant No.5 – Rohit Arvind Jadhav is **rejected**.

The name of the applicant No.3 – Dharmendra @ Shatru Raut appears in the statement of Srushti Pravin Divte, however, no overt act is attributed to him in the statement and he is not having any criminal antecedent.

The names of the applicant No.2 – Shubham Shankarlal Jaiswal and applicant No.4 – Anand Premkumar Gupta do not appear in the statement of Srushti Pravin Divte.

Considering the above facts, the following order is passed :

The applicant No.2 – Shubham Shankarlal Jaiswal, applicant No.3 – Dharmendra @ Shatru Raut and applicant No.4 - Anand Premkumar Gupta having been arrested in Crime No.573 of 2016 registered by the non-applicant, they be released on bail on executing P. R. Bond of Rs.50,000/- each and on furnishing one solvent surety for Rs.50,000/- for each of the applicant.

The application of applicant No.2 – Shubham Shankarlal Jaiswal, applicant No.3 – Dharmendra @ Shatru Raut and applicant No.4 - Anand Premkumar Gupta is **allowed** in the above terms.

CRIMINAL APPLICATIN (APPP) NO.806 OF 2017.

In view of disposal of the main application, the application for grant of time to file charge-sheet, typed copy of F. I. R. and say of A. P. P. and certified copy of order dated 12/04/2017 has become infructuous.

The Criminal application is disposed of accordingly.

JUDGE

PBP