

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

CRIMINAL APPLICATION (BA) NO.661 OF 2017
(Dinkar @ Dinya s/o Santoshrao Sonule 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 M.P. Lala, Advocate for applicant.
Ms. S. Jachak, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : AUGUST 23, 2017

Heard Shri Lala, learned Counsel for
applicant, and Ms. Jachak, learned Additional Public
Prosecutor for respondent.

This is the subsequent bail application filed
by one of the accused involved in Crime No. 586/2016
registered for the offences punishable under Sections
302 and 324 read with Section 34 of Indian Penal Code
by Police Station, Kalmeshwar, District Nagpur.

Earlier bail application being Criminal
Application No. 1085/2016 filed by applicant along with
co-accused came to be decided on merits by this Court
vide order dated 17/1/2017 and was rejected.
Admittedly, said application was considered after filing
of charge-sheet as charge-sheet in the present crime was
filed on 6/11/2016. Learned Counsel for applicant has
not disputed said aspect. Moreover, reference of filing of
charge-sheet is also found in the order dated 17/1/2017
by way of submissions advanced at that time on behalf of

applicant. Said fact is further corroborated from the reply wherein charge-sheet is stated to be filed. As such, present application is found to be filed again after earlier bail application was considered by this Court after filing of charge-sheet.

In the circumstances, Shri Lala, learned Counsel for applicant, has submitted that change of circumstances entitling applicant to move this application is release of co-accused Yogesh Homraj Sonule on bail by this Court vide order dated 27/6/2017. As such, present application is pressed on the ground of parity contending that co-accused, who is released as aforesaid, is similarly placed as applicant since according to case of said co-accused also, he is alleged to have committed assault on Sanjay Thote by stone weighing more than 21 kgs. and he succumbed to injuries caused to him by said co-accused also.

This Court while considering application of co-accused Yogesh had found that injuries caused on deceased were on lower limbs and since investigation was complete and charge-sheet was filed on 6/11/2016, co-accused Yogesh was found entitled for bail and as such, allowed his application.

Ms. Jachak, learned Additional Public Prosecutor has pointed out from the copy of charge-sheet and earlier order rejecting applicant's application that applicant's involvement in the present crime is direct in the sense that same is based on oral dying declaration of deceased Sanjay, who came to be admitted in the Hospital in unconscious condition on the day of incident,

i.e. on 7/9/2016 and died on 8/9/2016 at 7.35 p.m..

In view of submissions advanced and on perusal of documents filed with the charge-sheet, it is found that on complainant reaching Hospital on the basis of information received about deceased lying in an injured condition, oral dying declaration was made by deceased to complainant involving applicant along with co-accused as his assailants. Though assault is alleged to be by stone, considering the size of stone, its weight and injuries found on the person of deceased including three fractures sustained by him, i.e. fracture of left femur in lower one third, fracture of left tibia in upper one third and fracture of right fibula in upper one third. In addition to said fractures, he was found to have suffered penetrating wound over medial aspect of right thigh in lower one third of 1 cm in size x bone deep surrounded by contusion of size 20 x 10 cm (bluish colour). All these injuries are stated to be possible by stone.

In that view of the matter, there is prima facie evidence against applicant establishing his involvement in the present crime and since case of applicant is based totally on different footing, no case is made out for grant of bail on parity. The criminal application is, therefore, rejected.

JUDGE

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