

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

CRIMINAL APPLICATION (BA) NO. 785 OF 2017

(Aman S/o Badal Meshram and another..vs..State of Maharashtra, through
PSO.PS.Tumsar,District-Bhandara)

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

Court's or Judge's orders.

Shri S.P.Gadling, Advocate for applicants.

Shri R.S.Nayak, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J.
DATED : SEPTEMBER 6, 2017

This is an application for grant of regular bail.

Heard learned counsel for the applicants and
learned A.P.P. for State-non-applicant.

The applicants are arrested on 31/1/2017, in
connection with Crime No.43/2017, registered with P.S.
Tumsar, District-Bhandara, for the offence punishable under
Sections 302,307,147,148 and 149 of the Indian Penal Code,
Sections 3/25 and 4/25 of the Arms Act, and Section 3(2)(v)
of the Scheduled Castes and Scheduled Tribes(Prevention of
Atrocities),Act.

According to learned counsel for applicants there is
no admissible evidence against the present applicants even if
entire chargesheet is scrutinised. He submits that there cannot
be a charge against the present applicants for the offence
punishable under Scheduled Castes and Scheduled
Tribes(Prevention of Atrocities),Act in view of the fact that
both the applicants belong to Scheduled Caste. He further
submits that in the first informant's statement no role is
attributed against any of the present applicants. He submits

that nothing is seized at the behest of applicant no.1 though the blood stained knife is shown to have been discovered at the instance of applicant no.2 in his statement under Section 27 of the Indian Evidence Act , the said is not worth to consider at this stage. Therefore, he prayed that applicants be released on bail.

Per contra, learned A.P.P. would submit that the crime in question is very heinous. Deceased was done to death by using bullets which were fired from fire arm and also he was stabbed brutally by the accused persons. He submitted that the T-shirt which was on the person of the applicant no.1 at the time of his arrest tallies with the description of the T-shirt that was given by the prosecution witness Sumit while recording his police statement. He submitted that, in so far as applicant Nishikant is concerned at his behest knife is recovered from the place shown by the said applicant. So also the CDR shows that Nishikant was in contact with Gourav alongwith main accused who are the brothers namely Santosh and Satish Dahat. He also pointed out that one of the co-accused by name Prashant Gabhane moved an application for releasing him on bail, however since this Court was not inclined to grant bail in his favour his application was allowed to be withdrawn. Further, according to learned A.P.P. while permitting to withdraw the application, this Court granted liberty to said applicant Prashant Gabhane to move application before the learned Sessions Judge for expeditious trial. He therefore submits that looking to the nature of the offence application be rejected.

Though, there are more than one eye witness in the prosecution case for the consideration of the application of bail on behalf of the present applicants the relevant evidence is of only Amit Banerjee , the first informant and one Sumit @ Rinku Gautam.

The occurrence is of 30/1/2017 in between 8.00 p.m. to 9.00 p.m. The matter was reported to the police at 4.15 hrs. on 31/1/2017. Even it is not the submission of the learned counsel for the applicants that there is any delay in lodging the F.I.R.

Be that as it may, in respect of the occurrence the first informant's statement recorded by the police as given by Amit Banerjee reveals that on 30/1/2017 he and deceased Hemant, prosecution witness Sumit, another prosecution witness Bittu had been to gymnasium as usual and after completion of their work out in the gymnasium they proceeded towards their respective houses on their two wheelers. The prosecution witnesses Sumit and Bittu were on motorcycle Pulsor which was under the control of Sumit whereas first informant Amit and deceased Hemant were on Activa two wheeler. Their Activa was following Pulsor. When they reached in front of one school in bhajimandi that time deceased Hemant Ukey gave call to one person and asked first informant to stop the vehicle. Thereafter, deceased deboarded two wheeler, that time two motorcycles came near them. On one motorcycle Santosh and Satish Dahat were there while another motorcycle was plied by one Kailash And Ashish Gajbhiye. They parked their motorcycles and started proceeding towards first informant. That time one white

coloured Maruti Omni car came there. From the said car four persons alighted, that time Santosh Dahat used abusive language in so far as first informant is concerned and thereafter immediately opened fire. With a grace of god he survived and therefore to save his life he started running away from the spot. At that time, the attempt was made by the driver of Omni car to give dash to the first informant who was in the process of running that time he noticed that Satish Dahat opened fire from the gun he was holding . The said bullet which was fired from the gun pierced in the head of Hemant. Thereafter he reached to the police station. While he was running towards the police station he noticed that Prashant Gabhane(whose bail application was allowed to be withdrawn by this Court) sped away from the spot by taking two persons on his motorcycle. Those two persons were tied their faces by putting scarfs. When Amit had been to police station to narrate the incident that time prosecution witness Sumit @ Rinku informed Amit in the police station itself that one slim person who was wearing yellow T-shirt gave stab blows on the abdomen of Hemant.

During investigation, statement under Section 161 of Code of Criminal Procedure of Amit is also recorded. It is dated 2/2/2017. Though his police statement after having a closure scrutiny with his first information statement it appears that he made improvements prima facie by pointing out that the arrested persons by police i.e. present applicants must be the persons who gave knife blows as informed to him by Sumit.

The statement of Sumit which was recorded on 2/2/2017 also did not attribute any specific overtact against any of the present applicants by taking their specific names. However, his statement shows that his statement is recorded after arrest of the present applicants. His statement shows that the persons who left the place alongwith Prashant Gabhane on his motorcycle must be the present applicants as informed to him by Amit @ Babu Alok Banerjee. Thus, there is material contradiction on the face of record in so far as the presence of the present applicants on the spot of incident as it could be seen from the aforesaid discussions.

There is no recovery at the instance of applicant no.1 Aman. The reply shows that when Aman was arrested that time he was having yellow coloured T-shirt on his person. I am afraid that only such type of evidence can be press into service against any person. There may be so many persons in the vicinity who at the relevant time wearing yellow coloured T-shirt.

In so far as, applicant no.2 Nishikant is concerned, though recovery is shown of knife, the recovery panchnama depicts that one knife is recovered was not concealed at any place, however it was found to be open space. However, at this stage much importance cannot be attached to such recovery, though it is shown that it is recovered from the bushes.

A very pointed query was made to the learned A.P.P. whether there are any criminal antecedents against the discredit of the present applicants. The learned A.P.P. reply shows that the applicants previously were not arrested or face

any prosecution.

From the post mortem report cause of death is 'head injury' due to gun fire.

The chargesheet is already filed and that the nature of evidence available on record in my view further custodial presence of the applicants is not necessary. However, at the same time the interest of the prosecution can be secured by imposing conditions against the applicants. That leads me to pass the following order.

ORDER

- I) The application is allowed.
- II) Applicant no.1 Aman S/o Badal Meshram and applicant no.2 Nishikant S/o Kishor Raut be released on bail in Crime No.43/2017, registered with P.S.Tumsar,District-Bhandara, for the offence punishable under Sections 302,307,147,148 and 149 of the Indian Penal Code, Sections 3/25 and 4/25 of the Arms Act and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities),Act on they executing P.B. of Rs. 25000/- **each** with two solvent sureties in the like amount **each**.
- III) The applicants are directed to attend P.S.Tumsar , District-Bhandara twice a week i.e. on every Tuesday and Saturday in between 3.00 p.m. to 5.00 p.m. till the culmination of the trial.

- IV) The applicants shall not indulge in any such activities which could cause prejudice to the prosecution case.
- V) The observations made by this Court in the present order are only for the purpose of deciding the application for bail and those are only prima facie in nature. The learned Sessions Judge before whom trial shall commence shall not get himself influenced by such observations

With this the application is disposed of.

JUDGE

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