

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR****CRIMINAL APPLICATION (BA) NO.878/2017**

Salman s/o Firoz Quazi .vs.. State of Maharashtra through PSO P.S. Rana
Pratap Nagar, Nagpur.

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

Court's or Judge's orders.

Mr. R. K. Tiwari, Advocate for applicant.

Mr. T. A. Mirza, A.P.P. for non applicant.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 19, 2017

Heard Mr. R.K. Tiwari, Advocate for applicant
and Mr. T. A. Mirza, A.P.P. for non applicant.

This is an application for regular bail. The applicant is arrested in connection with Crime No.163/2016 registered with Police Station, Jaripatka, Nagpur for an offence punishable under Sections 302, 143, 147 and 149 of the Indian Penal Code. The applicant is arrested on 30.04.2016 and since then he is in jail.

The investigation is already over and the charge-sheet is already filed. The first informant is Mita De, who is the mother of one of the deceased Avinash. Even from the FIR, it is crystal clear that first informant is not an eye witness and the factum of assault was transmitted to her by one Radha who is girlfriend of the deceased Avinash.

The statement of Radha is recorded on 30.04.2016. From her statement, it is clear that the

deceased Avinash was having criminal past record. Not only that from her statement it is clear that Avinash was also habituated to narcotic drugs. As per the statement of Radha, on 29.04.2016, Avinash came to her house and informed that he was arrested. However, he is now released on bail and therefore both of them went to his house. However, his house was locked. Thereafter, Radha and Avinash went near the house of the maternal aunt who was residing near the house of one Anil Magnani and sat on the staircase. On the staircase, Avinash had a shot of the narcotic drug. Thereafter, while they were sleeping there at about 11.00 O'clock another deceased Kuldip alias Pandit Tiwari came there and he asked as to whether Atul is there. On his inquiry, it was stated to him that Atul is not there. Therefore, Kuldip alias Pandit left the place in search of Atul towards Deo Nagar. After some time, accused Jamsher Ansari came there. He demanded narcotic drug from Avinash. However, that time, Avinash was not having contraband substance. However, he offered cigarette to him. As per the statement of Radha, she asked Jamsher as to what is the time. That time, Jamsher replied that it is 12 O'clock in the night. That time, Jamsher asked Avinash as to where Pandit has gone and they are intending to kill Pandit. At that time, according to the statement of Radha, amongst others, the present applicant was there. After some time, Pandit arrived on the spot. After his arrival, Jamsher started beating Pandit

by wooden stick. That time, Avinash tried to intervene however he was assaulted by Jamsher and others. The statement of Radha shown the general nature of allegations against Salman, the present applicant.

During the course of investigation, clothes of all the accused persons were seized. Even as per the charge-sheet, there are no blood stains on the clothes of the present applicant. Further, there is no recovery at the instance of the present applicant. The learned A.P.P. has submitted that there are number of offences against other co-accused persons. Therefore, this Court adjourned the matter on two occasions giving an opportunity to the learned A.P.P. and also the investigating officer to search as to whether the applicant is having any past record at his discredit including offences under the Narcotics Drugs and Psychotropic Substances Act or even under the Gambling Act. The investigating officer is personally present in the Court. He has given instructions to the learned A.P.P. that against the present applicant, there are no offences of any kind. The applicant is in jail since 30.04.2016. There is no recovery at the instance of the present applicant. The clothes of the applicant were not found to be stained. Further, no offences are registered against the present applicant. Insofar as other accused persons are concerned, they are having tainted past history.

In that view of the matter, the applicant has made out a case for bail since it is reported to this Court

that even the charge is not framed and there is no possibility of the sessions trial being taken up for hearing. Hence, following order is passed.

ORDER

- (i) Criminal Application No.878/2017 is allowed.
- (ii) Applicant-Salman s/o Firoz Quazi be released on bail in connection with Crime No.163/2016 registered with Police Station, Rana Pratap Nagar, Nagpur for an offence punishable under Sections 302, 143, 147 and 149 of the Indian Penal Code on he executing P.R. Bond in the sum of Rs.25,000/- with two solvent sureties in the like amount.
- (iii) The applicant shall attend Police Station, Rana Pratap Nagar, Nagpur once in a week i.e. on every Saturday and he shall be with investigating officer from 03.00 p.m. to 5.00 p.m. till the culmination of the trial.
- (iv) The applicant shall not extend any types of threats to any of the prosecution witness.
- (v) If it is noticed by the investigating officer that the applicant is committing breach of the conditions, the investigating officer shall be at liberty to file an appropriate application for cancellation of bail.

The application stands disposed of.

JUDGE