

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

CRIMINAL APPLICATION (BA) NO.887 OF 2016
(Milind Nilkanth Kale 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 V.K. Gulhane, Advocate for applicant.
Shri C.A. Lokhande, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 20, 2017

This application is filed by one of the accused involved in Crime No. 85/2016 registered under Sections 324 and 307 read with Section 34 of Indian Penal Code and Section 3/25 of Arms Act.

Heard Shri Gulhane, learned Counsel for applicant, and Shri Lokhande, learned Additional Public Prosecutor for respondent.

Shri Gulhane, learned Counsel for applicant, has submitted that except for name of applicant mentioned in the report, no overt act is attributed to him as co-accused Dadamude is stated to have committed assault. It is contended that according to injury certificate of complainant Nitin Shendre, he is stated to have sustained one injury in the nature of contusion, which is certified to be simple. It is further submitted that since investigation is complete and applicant is in custody since 21/7/2016, application be allowed.

Shri Lokhande, learned Additional Public Prosecutor for respondent, has opposed the application

as per reply contending that there is direct evidence against applicant. Learned Additional Public Prosecutor, however, has not disputed that except for name of applicant in first information report, there is no overt act attributed to him. So far as second incident, which took place on 20/7/2016 is concerned, perusal of report reveals that on that day, some quarrel took place between co-accused Dadamude and complainant when said co-accused attempted to assault complainant by chair when applicant is alleged to have caught hold of complainant when chair struck to complainant's hand and eye. It is further contended that 15-20 minutes thereafter accused Dadamude suddenly arrived and after catching complainant from behind by his hair, fired with country made revolver upon him, which bullet did not strike. Co-accused Dadamude then committed assault on complainant by knife on his legs and due to which, he sustained bleeding injuries.

Considering contents of report, there appears no overt act attributed to applicant in the subsequent incident except for stating that applicant was present with co-accused and ran away after the incident. Moreover, when injury report of complainant is perused, he is certified to have sustained only one contusion. As such, it is prima facie found that no injury as alleged in the report by knife was found on the person of complainant on his examination by Medical Officer at Kanhan immediately after the incident.

In that view of the matter and since investigation is complete, application is liable to be

allowed as per order below :

The applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.20,000/- with one surety in like amount. He shall mark attendance with Police Station, Kanhan on first day of every three months pending trial. He shall furnish proof of his residential address to Police Station, Kanhan and shall update the same in the event of any change therein.

The criminal application is accordingly allowed.

JUDGE

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