

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

CRIMINAL APPLICATION (BA) NO.925 OF 2016
(Kisansing s/o Bhurisingh Baghel 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 P. Rajurkar, Advocate for applicant.
Shri A.S. Ashirgade, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 16, 2017

Heard Shri Rajurkar, learned Counsel for
applicant, and Shri Ashirgade, learned Additional Public
Prosecutor for respondent.

This application is filed for bail in Crime
No.297/2016 registered under Section 302 read Section
34 of Indian Penal Code.

Shri Rajurkar, learned Counsel for applicant,
has submitted that even on accepting the case of
prosecution as it is, it cannot be said that applicant is
author of the injury sustained by deceased which,
according to post mortem report, is cause of death. It is
contended that in that view of the matter, as
investigation is complete, application be allowed.

Shri Ashirgade, learned Additional Public
Prosecutor for respondent, has opposed the application
as per reply and contended that as per statement of eye
witness Sunil alias Mangesh Charde, applicant
committed assault upon deceased along with other

co-accused. It is, however, contended that there are no statements of witnesses establishing any specific role to applicant or other co-accused.

In that view of the matter, it is found that though there is a statement of eye witness Sunil alias Mangesh Charde, he is silent as to what injury is caused by applicant. On perusal of the documents filed along with charge-sheet, it is revealed that report was lodged by Nilesh Petkar, Manager, K.M. Refinery Pvt. Ltd., Dabha within Badnera Police Station that Sunil alias Mangesh Charde, Security Guard of said Refinery at 7 a.m. on 10/5/2016 gave telephonic information about one unknown person found dead near the Refinery. On the basis of information supplied by Manager, initially A.D. case was registered and was investigated. During the course of investigation, on recording statement of Sunil alias Mangesh Charde, Security Guard at the Refinery, it is revealed that in the night intervening 9/5/2016 and 10/5/2016 when he was on duty at 2.15 a.m. one person, who appeared to be mentally challenged, came near the Refinery and on enquiry, was not in a position to reply any question. In the meantime, other labourers including applicant woke up. Sanjay Hirankhede, Manager assaulted deceased by giving two fist blows. As per statement of eye witness, thereafter Sanjay Hirankhede caught hold of deceased while co-accused Rameshwar Kashyap tied his hands and he was brought near the weighing bridge where co-accused Gautaskumar and applicant came. Applicant assaulted deceased by stick while Rameshwar Kashyap and Sanjay

Hirankhede assaulted deceased by kick blows. The said person was found dead in the morning at 6.30 o'clock.

From the contents of the report as well as statement of Sunil alias Mangesh Charde, it is revealed that role attributed to applicant is that he committed assault by stick on deceased along with co-accused Gautaskumar, Rameshwar Kashyap and Sanjay Hirankhede. It is material to note that neither in the report, which came to be lodged on the information received from eye witness Sunil alias Mangesh Charde, nor in his statement, it is stated as to on what part of body of deceased, applicant committed assault by stick. Admittedly, there are no statements establishing assault by applicant on head of deceased.

On perusal of post mortem report, deceased is stated to have sustained injury on left side of forehead admeasuring 3 cm. x 3 cm. Apart from this injury, he was found to have swollen eye and contusion over back of chest. Deceased is stated to have sustained head injury under scalp hematoma of size 10 cm. x 5 cm. and in right temporoparietal region, skull is noted to be fractured. The cause of death is certified to be due to head injury. In that view of the matter, it is the case of prosecution that deceased died of sustaining head injury. However, there is nothing on record as to who is author of head injury when admittedly deceased is said to be assaulted by stick by applicant and co-accused Gautaskumar and by kick and fist blows by Sanjay Hirankhede and Rameshwar Kashyap.

Having considered aforesaid facts,

application is liable to be allowed by imposing suitable conditions as applicant is admittedly not resident of State of Maharashtra. Hence, the following order :

Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- with one local surety in the like amount. While on bail, applicant shall reside at Badnera or Amravati pending trial. Applicant shall mark attendance with Police Station within whose jurisdiction he would prefer to stay pending trial on first day of each month initially for six months and thereafter on the alternate month pending trial. Applicant shall furnish proof of his residential address to concerned Police Station and shall update the same in the event of any change therein. In addition to above, applicant shall mark his presence with Police Station, Badnera on first day of every three months. The criminal application is accordingly allowed.

JUDGE

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