

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

CRIMINAL APPLICATION (BA) NO.974 OF 2017

Rajesh @ Ganesh s/o Gajanan Bodade, R/o Jawla Tah. Shegaon, Dist. Buldhana

-vs-

State of Maharashtra, Thr. PSO, PS Shegaon City, Dist. Buldhana

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. K. Bhangde, Advocate for applicant.

Shri S. M. Ghodeswar, APP for non-applicant/State.

CORAM : A.S.CHANDURKAR, J.

DATE : November 10, 2017

The applicant who has been arrested on 16/08/2016 in connection with Crime No.303/2016 registered with Police Station Shegaon City, Dist. Buldhana for the offence punishable under Sections 302, 504, 506 read with Section 34 of the Indian Penal Code seeks his release on bail.

As per the First Information Report dated 16/08/2016 the informant has stated that her husband-Jagdish was handicapped and had a habit of consuming liquor. He used to beg during day time near the temple. The informant stated that on the said date at about 1 pm her husband told that he was given threats by the applicant Rajesh and hence he had gone to another place. She then got information at about 4 pm that a person was lying injured and was being taken to hospital. When she went to hospital she identified her husband who thereafter expired due to injuries. After the offence was registered the applicant as well as one Rupesh came to be arrested.

It is submitted on behalf of the applicant that after completion of investigation the charge-sheet has now been filed. Statement of one Ganesh Goyal recorded on 17/08/2016 is referred to. This witness has stated that at about 2.30 pm when he was at his shop, two boys had come there and had requested him to keep their bags in his shop. The said witness refused to do so. Later on he found those two boys along with an old person. The said boys were assaulting the old person with a stick as well as kicks and fist blows. He later on learnt that the said old person was a beggar who had expired. It is submitted that this witness failed to identify the applicant in test identification parade. It is then submitted that the statement of another witness Dnyaneshwar Marke indicates that the applicant was identified on the basis of CC TV footage. However, alongwith charge-sheet there is no certificate as required by provisions of Section 65-D of the Evidence Act and in view of the law laid down in **Anvar P.V. vs. P.K. Basheer and ors. AIR 2015 SC 180**, such material has no evidentiary value. It is thus submitted that considering the nature of evidence available, a case for applicant's release on bail is made out.

The application is opposed by the learned Additional Public Prosecutor by relying upon the reply. It is submitted that the applicant was identified by one of the witnesses Dnyaneshwar Marke. Considering his statement the involvement of the applicant is apparent. In view of seriousness of the offence, the applicant does not deserve to be released.

Perused the First Information Report as well as documents filed along with charge-sheet. As per the statement of witness Ganesh Goyal he initially seen the applicant along with other accused as they had come to the shop of this witness. However, this witness failed to identify the applicant during the test identification parade. In so far as statement of Dnyaneshwar Marke is concerned he has referred to the presence of the applicant alongwith two others and they were taking the victim away. The subsequent statement based on the CC TV footage is a matter which would have to be considered during trial especially in the light of law laid down in *Anvar P. V.* (supra). Presently, the requisite certificate under Section 65-D of the Evidence Act is not on record. Considering the fact that the applicant is behind bars since 16/08/2016 and as the charge-sheet has now been filed, considering the material on record against the present applicant, he is entitled to be released on bail.

Hence the applicant Rajesh @ Ganesh s/o Gajanan Bodade who has been arrested in connection with Crime No.303/2016 registered with Police Station Shegaon City, Dist. Buldhana for the offence punishable under Sections 302, 504, 506 read with Section 34 of the Indian Penal Code is directed to be released on bail on furnishing PR Bond of Rs.20,000/- (Rupees Twenty Thousand) with one surety in the like amount.

The applicant shall co-operate in completion of trial and shall not influence the prosecution witnesses.

The observations made in this order are only for deciding this application which is allowed and disposed of.

JUDGE