

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

CRIMINAL APPLICATION (BA) NO. 1002 OF 2017

ASHISH S/O NARENDRA GAJBHIYE
VS
STATE OF MAHARASHTRA

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

Court's or Judge's Orders.

Shri S. P. Gadling, Advocate for applicant.
Shri C. A. Lokhande, Addl. Public Prosecutor for non-
applicant.

CORAM : A.S.CHANDURKAR, J.
DATE : November 06, 2017

The applicant who has been arrested on 3rd February, 2017 seeks his release on bail.

As per the First Information Report dated 31/1/2017 the informant alongwith his three friends were returning in the evening between 7.00 p.m. and 8.00 p.m. At that time the motorcycle on which one Hemant Ukey was riding was stopped. The accused came in a Maruti van as well as on two wheelers and started assaulting said Hemant Ukey. He was fired on with a gun due to which he was injured. After that attack Hemant was assaulted with a knife by person wearing a yellow T-shirt. Pursuant to the applicant's arrest a knife has been recovered on memorandum under Section 27 of the Evidence Act.

The learned counsel for the applicant submitted that the chargesheet has been now filed and as per the statements of

witnesses no specific act has been attributed to the present applicant. According to the prosecution, the assault by knife was by person wearing yellow T-shirt who has already been arrested and then released. Recovery of two knives have been shown while it is the case of the prosecution that there was assault by one accused with a knife. It is thus submitted that considering this material on record the applicant is entitled to be released on bail.

The application is opposed by the learned Additional Public Prosecutor by referring the statements of two eye witnesses. It is submitted that a knife has been recovered at the instance of the applicant and hence there is sufficient material to implicate him. He has also referred to the postmortem report to indicate the nature of injuries suffered by the deceased.

Perused the First Information Report as well as the the statements of witnesses which form part of the chargesheet. The statements of Amit Banerjee, Sumit Gautam and Gaurao Singade indicate that present applicant was present at the spot. The applicant had abused the deceased. One Santosh Dahat had used a gun for injuring the deceased and accused wearing a yellow T-shirt had assaulted the deceased with a knife. There has been no recovery by the prosecution from the applicant.

As per the order passed in Criminal Bail Application No. 785/2017 the applicant therein was the accused who was said to be wearing a yellow colour T-shirt. Considering the fact that the

chargesheet has now been filed after completion of investigation and as the statements of witnesses do not refer to any specific overtact by applicant herein, I find he is entitled to be enlarged on bail.

No doubt there has been seizure effected but as the investigation is now complete further detention of the applicant is not warranted.

In view of aforesaid the following order is passed.

ORDER

- I] The application is allowed.
- II] Applicant Ashish S/o Narendra Gajbhiye 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 his executing P.R Bond of Rs. 25,000/- with one solevent surety in the like amount.
- III] The applicant is 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 applicant shall not indulge in any such activities which could cause prejudice to the prosecution case.
- V] It is clarified that the observations made in order are only for deciding the application for bail.

Application is accordingly allowed and disposed of.

JUDGE

/Muley/