

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

CRIMINAL APPLICATION (ABA) NO.768 OF 2016

Santosh s/o Nivrutti Sathe

..VS..

State of Maharashtra, through P.S.O., P.S. M.I.D.C., Malkapur, District Buldana

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

Court's or Judge's Order

Shri Mahesh Rai, Counsel for the applicant.

Shri S.D. Sirpurkar, Addll.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 15, 2017.

One of the accused involved in Crime No.35 of 2016 registered for the offences punishable under Sections 307, 452, 143, 147, 148, and 149 of the Indian Penal Code has filed this application for bail.

Heard learned counsel for the applicant and learned Additional Public Prosecutor.

Perused the case diary.

Learned counsel for the applicant has submitted that this application arises out of Crime No.35 of 2016 registered on the basis of report lodged by Dhirendrasingh in respect of incident dated 22.9.2016 which took place at 10:45 a.m., while on the basis of report lodged by applicant Santosh, Crime

No.34 of 2016 is registered by the same police station on the same day for the offences punishable under Sections 307 and 504 of the Indian Penal Code against complainant and others including injured Vishwas Jadhav in Crime No.35 of 2016.

By referring to report, it is submitted that no injury alleged to have caused to Vishwas Jadhav can be attributed to applicant as contents of report as well as statements are general in nature. It is, therefore, contended that as fourteen other accused, who are involved in this crime, are released on bail, application be allowed on parity though investigation is in progress, by imposing the suitable conditions.

Learned Additional Public Prosecutor opposed the application as per its affidavit-in-reply on record and on the ground that from report involvement of applicant is fully established which is further stated to be corroborated by statement of Samrat Deshmukh. It is thus contended that as from statements of both these eyewitnesses contents of each are found corroborated with medical report, application is liable to be rejected as investigation is in progress and applicant's custody is necessary for the purpose of recovery of dagger involved in crime. It is thus contended that application be rejected.

Learned Additional Public Prosecutor to a

specific query put to him, however made a statement at bar that no statement of Banti is forming part of case diary who is named as an eyewitness in the report lodged by Dhirendrasingh.

Perusal of report reveals that incident took place on 22.9.2016 at 10:45 a.m. where complainant along with security guard Pramod Tayde, Vishwas Jadhav, injured, and Samrat Deshmukh, General Manager were present when applicant along with co-accused Vijay Sathe, Samadhan Sathe, Shrawan Patil, Pradip Narwade, Dhanraj, Bhagwat, and 10 to 15 others all of a sudden arrived in a four wheeler and attempted to enter the company premises situated at M.I.D.C.. It is further stated that applicant along with co-accused Vijay Sathe and 12 to 13 other co-accused were talking with injured Vishwas about some quarrel involving Dhnyandev and Raj Sawale and while enquiring, applicant along with Vijay, Shrawan, Samadhan, Bhagwat, Dhanraj, and Pradip indulged into quarrel which was tried to be pacified by Samrat Deshmukh where it is alleged that applicant committed assault by dagger on right thigh of Vishwas, however it did not struck and cause injury to right hand palm of Vishwas when he attempted to caught hold the same. As per report, said incident of assault is stated to be witnessed by Security Guard Pramod Tayde, Deshmukh Sir, and

Banti Kolte who also referred injured Vishwas to hospital.

In the background of contents of report as aforesaid, to a specific query put to learned Additional Public Prosecutor by referring to statement of Pramod Tayde, Security Guard it is stated that his statement does not involve applicant in view of fact that same is hearsay. With reference to query with regard to statement of Banti, it is stated that his statement does not form a part of case diary. In that view of the matter, statement of Samrat Deshmukh is only required to be considered. Perusal of his statement would reveal that prior to incident of assault applicant along with 12 to 13 others were enquiring with injured Vishwas about quarrel between Dhnyandev, Security Guard and Raj Sawale when all of a sudden they all started manhandling him and while Samrat Deshmukh, Pramod Tayde, and Banti intervened noted that injured Vishwas had sustained injuries on his hand and thigh. It is further stated that at that time he noted applicant having armed with dagger and was in process of committing further assault on Vishwas, however finding that Vishwas was lying in pool of blood, all assailants left the spot.

On bare perusal of statement of Samrat, it is thus material to note that there is no reference as to

who is author of injuries sustained by Vishwas on his thigh and hand as, as per his statement on his intervening assault, he found Vishwas having sustained injuries on his thigh and hand which was profusely bleeding and found applicant armed with dagger.

Learned Additional Public Prosecutor by referring to contents of statement as aforesaid made effort to convey that since applicant at the material time was found having armed with dagger, it has to be presumed that injuries sustained on thigh and on hand of Santosh were caused by him, however for want of convincing evidence said arguments are not sustainable.

Similarly, from injury certificate it is found that injured has sustained 3 injuries out of which one is stated to be grievous which is stab wound on right thigh, others are simple injuries and from available material on record, it cannot be said that applicant is author of said grievous injury.

In that view of the matter and since according to reply weapon of assault is stated to be already seized from the spot, while drawing spot panchanama, there appears no reason for custodial interrogation of applicant for the purpose of effecting seizure of said weapon.

In the circumstances, *interim* orders dated 23.11.2016 is liable to be confirmed by allowing the

application as per the order below:

Order dated 23.11.2016 stands confirmed on same terms and conditions with a further direction to applicant to attend investigating officer, if called, till filing of charge-sheet.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 17/3/2017