

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

CRIMINAL APPLICATION (BA) NO.1061 OF 2016
(Shyamrao s/o Ghena Pawar vs. The 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 A.C. Jaltare, Advocate for applicant.
Shri A.V. Palshikar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 14, 2017

This is an application for bail by one of the
accused in Crime No. 244/2016 registered under Section
302 read with Section 34 of Indian Penal Code.

Heard Shri Jaltare, learned Counsel for
applicant, and Shri Palshikar, learned Additional Public
Prosecutor for respondent.

Shri Jaltare, learned Counsel for applicant,
has submitted that applicant is falsely involved due to
strained relations between applicant and deceased
Raisingh, husband of complainant. By referring to the
report, learned Counsel for applicant has demonstrated
as to how complainant in her additional statement
developed false story establishing eye witnesses to the
incident of assault where Raisingh died. It is contended
that after recording statement of complainant, her
additional statement came to be recorded on the
following day and her further statement came to be
recorded eight days thereafter and after recording her

statement and additional statement as aforesaid, to suit her statements, statements of alleged eye witnesses Bhimrao, Chetan and Sandeep are recorded. It is, therefore, submitted that said witnesses are got up witnesses and since it cannot be said from their statements or additional statements of complainant that applicant is involved in the present crime as assailant of deceased Raisingh, he be released on bail in view of the fact that investigation is complete and charge-sheet is filed, by imposing suitable conditions.

Shri Palshikar, learned Additional Public Prosecutor for respondent, has opposed the application as per reply on record and submitted that from the statements of eye witness Pandurang Chauhan, it is established that deceased Raisingh was assaulted by applicant by stick and as per post mortem report, deceased Raisingh is stated to have sustained fracture of ribs. It is contended that eye witness's account is corroborated by medical evidence establishing involvement of applicant. It is further contended that recovery of axe and stick is effected at the instance of co-accused Rajesh, son of applicant. It is, therefore, submitted that application be rejected.

In the light of submissions advanced as aforesaid, perusal of report lodged by Malabai, wife of deceased Raisingh, reveals that relations of her family members with applicant were strained much prior to the incident on the issue of boundary of their fields. From the report it is also revealed that some criminal cases were pending between them at the time of incident. With

regard to incident in question, complainant stated that on 15/8/2016 deceased Raisingh at about 8 – 8.30 p.m. went to his field to protect the crop. On the following day, at 7 a.m. she went to field, but did not notice her husband and, therefore, went towards nalla where her husband used to go to catch fish and found her husband lying there having sustained bleeding injuries on his head. Within short time, villagers arrived and thereafter Police also arrived on the spot.

On 16/8/2016 report came to be lodged as aforesaid. It is material to note that on 17/8/2016, additional statement of complainant came to be recorded wherein she stated that since deceased husband did not return back, she asked her father-in-law Bhimrao and his sons Chetan and Sandeep to go to field and look for her husband and they accordingly went to field and after returning after one and half hours informed that they did not see her husband. From her additional statement, it appears that she had requested Bhimrao, Chetan and Sandeep to look for her husband after 11.30 p.m. and they returned one and half hours thereafter, i.e. by 1 a.m. and informed that they did not find deceased Raisingh.

It is further material to note that after statement of complainant is recorded on 25/8/2016, i.e. after eight days of incident when complainant states that since deceased husband did not return back till 11.30 p.m., she requested her father-in-law and his sons Chetan and Sandeep to find out her husband, who on returning back, informed her that while they were

proceeding to see the deceased, they had seen applicant Shyamrao and co-accused Rajesh when Shyamrao was having axe and Rajesh was having something like stick in their hands.

Contents of report dated 16/8/2016, additional statement of complainant dated 17/8/2016 and her further statement dated 25/8/2016, therefore, reveal that she had added certain facts as aforesaid and thereafter statement of sole eye witness Pandurang Chauhan was recorded on 23/8/2016. In view of added statements in the additional statement and further statement of complainant about Bhimrao, Chetan and Sandeep seeing applicant and co-accused Rajesh having axe and stick in their hands when statement of Bhimrao and Chetan are perused, though statements of Bhimrao and Chetan reveal of their seeing applicant and his son returning from field having axe and stick in their hands, additional statement of complainant dated 17/8/2016 is silent about Bhimrao and Chetan informing her of their seeing applicant and his son armed with weapons as aforesaid as according to her statement, after Bhimrao and Chetan arrived after one and half hours, they informed her that they did not find her husband.

In the background of aforesaid facts, statement of sole eye witness Pandurang Chauhan when perused, it is revealed that in the night of 15/8/2016 as decided between him and deceased when he visited deceased in his field at 12 midnight, he heard some quarrel and with the help of torch light found applicant, his son co-accused Rajesh along with one person

committing assault upon deceased when co-accused Rajesh was assaulting by axe along with one person while applicant was armed with stick. It is material to note that statement of this sole eye witness is recorded on 23/8/2016. As per his further statement, he did not state said fact to anyone in village, for which he put forth reason that due to this incident, he was not keeping well. However, from his statement it is also revealed that on the following day at 7-7.30 a.m. he went to the spot and found dead body of Raisingh lying there. Contents of statement of sole eye witness, therefore, create reasonable doubt of his witnessing the incident, particularly in view of delay in recording his statement and secondly, in view of material provided by complainant in piecemeal to the Investigating Officer after recording her report on 16/8/2016 on two occasions when her additional statement and further statement were recorded.

In view of nature of evidence available against applicant as aforesaid, though it is also the case of prosecution that at the instance of co-accused axe and stick are recovered from bush, i.e. from open space, this by itself would be no sufficient ground to reject the application. In view of the fact that investigation is complete and since prima facie it is found that involvement of applicant is false, 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.50,000/- with one surety in like amount. Applicant shall mark his

presence with Police Station, Pusad (Rural), District Yavatmal on first day of every three months. Applicant shall furnish proof of his residential address to Investigating Officer and shall update the same in the event of any change therein.

Needless to say that learned trial Judge shall not get influenced by the observations as aforesaid and shall independently evaluate the evidence at the time of trial.

The criminal application is accordingly allowed.

JUDGE

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