

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

CRIMINAL APPLICATION (BA) NO.1085 OF 2016
(Dinkar s/o Santoshrao Sonule and another 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 Mahesh Rai, Advocate for applicants.
Shri I.J. Damle, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 17, 2017

This is an application by both the accused for bail, who are involved in Crime No. 586/2016 initially registered under Section 324 read with Section 34 of Indian Penal Code wherein offence punishable under Section 302 of Indian Penal Code came to be added due to death of Sanjay Thote.

Shri Rai, learned Counsel for applicants, has submitted that there is no evidence against applicants establishing their involvement as assailants of deceased Sanjay Thote. It is contended that admittedly complainant Vilas Thote is not an eye witness to the incident as he reached the spot subsequently and found his brother Sanjay Thote lying in an injured condition. It is also pointed out that information was received by complainant from his cousin, namely, Chetan Thote about Sanjay Thote lying in an injured condition near Ankur godown on Mangrul road. It is submitted that even Chetan Thote is silent as to who are assailants of

deceased Sanjay Thote.

In the background of above facts, it is further contended that even according to the case of prosecution, role attributed to applicants is of assault by stone on legs of deceased Sanjay Thote and thus, it cannot be said that applicants had intention to commit murder of deceased Sanjay Thote. It is, therefore, prayed that since investigation is complete and charge-sheet is filed, application be allowed by imposing suitable conditions.

Shri Damle, learned Additional Public Prosecutor for respondent, has opposed the application on the lines of reply filed on record. He has contended that involvement of applicants is established from the immediate disclosure made by deceased to complainant involving applicants as assailants. It is further contended that from the grievous injuries found to be caused to deceased, which proved to be fatal, the case of applicants of having no intention to commit murder of deceased is without any basis. For this purpose, learned Additional Public Prosecutor has referred to injuries sustained by deceased as referred in post mortem report. It is further contended that prior to incident, relations between family members of deceased and applicants were not cordial on the issue of grazing of cattle as on 26/1/2016 such quarrel took place amongst them. It is also contended by learned Additional Public Prosecutor that wife and mother of deceased have also started receiving threats from the family members of applicants, who are in Jail and, therefore, offences punishable under

Sections 107 and 116(3) of Code of Criminal Procedure are registered. It is, therefore, submitted that application be rejected.

Offences appear to be registered on the basis of report lodged by Vilas wherein he has specifically stated that on 7/9/2016, after 5.30 p.m. he was informed by his cousin Chetan that his brother deceased Sanjay was lying in an injured condition near Ankur godown and thus, he visited the spot with Chetan and found Sanjay lying there having injuries on his legs. On enquiring from Sanjay, he was informed that Sanjay was assaulted by both the applicants along with co-accused Prashant Satpute by stones. Injured Sanjay was initially taken to Lata Mangeskar Hospital and was under treatment.

Statement of Chetan corroborates version of complainant. Applicants' involvement is revealed from the oral dying declaration of deceased Sanjay wherein he has stated that both the applicants along with co-accused assaulted him by stones on legs. It is material to point out that deceased Sanjay immediately made disclosure to complainant after the incident involving both the applicants.

From the case diary made available by learned Additional Public Prosecutor, it is noted that deceased Sanjay was admitted in unconscious condition on 7/9/2016 and while under medical treatment, died on 8/9/2016 at 7.25 p.m. on sustaining severe cardiac arrest. From the medical papers it is noted that during this period, deceased Sanjay was provided medical

treatment and his x-rays, etc. were obtained. However, from the entire case diary, learned Additional Public Prosecutor could not point out if any attempt was made by the Investigating Officer to record statement of deceased though it is found that on admission in the Hospital, Investigating Officer had issued a memo to Medical Officer to state physical condition of deceased Sanjay and whether he would be in a position to make his statement when on 7/9/2016 at 8.50 p.m. patient was stated to be unfit to make any statement.

Though there is no statement as such of deceased recorded, from the contents of report it is noted that both the applicants are involved by deceased Sanjay as his assailants. It is specifically stated that both of them along with co-accused had assaulted him by stones on legs. Said statement of deceased Sanjay establishing involvement of applicants does not create any doubt. On the contrary, it is found corroborated by the injuries sustained by deceased Sanjay as according to post mortem report, he was found to have three fractures, i.e. fracture of left femur in lower one third, fracture of left tibia in upper one third and fracture of right fibula in upper one third. In addition to said fractures, he was found to have suffered penetrating wound over medial aspect of right thigh in lower one third of 1 cm in size x bone deep surrounded by contusion of size 20 x 10 cm. (bluish colour). All the injuries being fractures and penetrating wound prima facie appear to be possible by stone as alleged by prosecution. The stone, which was found weighing more

than ten kgs., came to be seized from the spot under panchanama. The cause of death of Sanjay is hemorrhagic shock due to injuries sustained.

Having considered available evidence, it cannot be said that applicants had no intention to commit murder of deceased Sanjay as put forth on their behalf. The application is, therefore, devoid of merits and hence, the same is rejected.

JUDGE

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