

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

CRIMINAL APPLICATION (BA) NO.1097 OF 2016
(Mangesh @ Mangalu s/o Shekhar Sadamake 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 C.R. Thakur, Advocate for applicant.
Shri N.B. Jawade, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 1, 2017

Applicant Mangesh alias Mangalu s/o Shekhar Sadamake, shown as accused no.2 in the charge-sheet filed in Crime No.156/2016 for the offences punishable under Sections 397 and 307 read with Section 34 of Indian Penal Code has applied for bail.

Shri Thakur, learned Counsel for applicant, has submitted that report is lodged against unknown persons wherein it is alleged that complainant along with Pradeep and Mayur are assaulted. It is contended that during the course of investigation, it is revealed that assault committed on Pradeep is serious, however, same is committed by co-accused Gaurav and not by applicant. It is pointed out from the injury reports of Mayur and complainant Arun that they are stated to have sustained simple injuries. Thus, it is the case of applicant that Section 307 of Indian Penal Code applied in this crime cannot be attracted so far as he is concerned as according to Investigating Officer and contents of

charge-sheet, injuries sustained by Pradeep are attributed to co-accused. It is, therefore, submitted that application be allowed by imposing suitable conditions as there is no propriety in keeping applicant behind bars pending trial, of which investigation is complete.

Shri Jawade, learned Additional Public Prosecutor has opposed the application as per reply on record and contended that there is direct evidence of injured eye witnesses establishing involvement of applicant in the present crime.

With regards to injuries sustained by Pradeep, who is stated to have sustained serious injuries, though in para 6 of the reply it is specifically stated that it is applicant, who has assaulted Pradeep on stomach and, therefore, complicity of applicant is prima facie made out from the material collected during the course of investigation, learned Additional Public Prosecutor on instructions has submitted that it is co-accused, who is shown as accused no.1, who had committed assault on Pradeep. However, it is submitted that applicant is a history-sheeter and is convicted for the offence punishable under Section 302 of Indian Penal Code and other cases under Sections 380 and 457 of Indian Penal Code are pending against him. It is, therefore, submitted that in view of criminal antecedents, applicant does not deserve to be released on bail.

In the background of submissions as aforesaid, it is noted that report came to be lodged by Arun wherein he has stated that while he was proceeding on motor-cycle, he was intercepted by two unknown

persons, who snatched away his two wheeler, however, could not flee away with the vehicle since it got stuck in mud. In the meantime, complainant informed this fact to his master, namely, Pradeep, who arrived along with Mayur on spot. It is further stated that while complainant, Pradeep and Mayur started searching for two unknown suspects, they were found hiding near Parley Company and when complainant and two others went near them, they assaulted Pradeep, Mayur and complainant Arun. It is specifically stated that Pradeep was assaulted on his abdomen, Mayur on chest and complainant Arun on head and thigh. Admittedly, injured Arun and Mayur are certified to have sustained simple injuries while Pradeep is stated to have sustained four incised wounds including one on his abdomen. From the charge-sheet, it is found that injuries sustained by Mayur and Arun are simple.

On perusal of copy of charge-sheet, it is material to note that on completion of investigation, it is stated in the charge-sheet that accused no.1 had committed assault on Pradeep on his stomach while applicant, who is accused no.2, has committed assault on complainant. Co-accused Gaurav is also stated to have caused injuries to Mayur. Involvement of applicant is thus only with regard to causing injuries on complainant Arun, who is stated to have sustained injuries on his head and thigh, which are simple.

With regard to criminal antecedents of applicant, learned Additional Public Prosecutor has not disputed statement made on behalf of applicant about

applicant's acquittal by this Court in appeal preferred against his conviction for the offence punishable under Section 302 of Indian Penal Code much prior to incident. As such, facts which need consideration is two offences pending against applicant as on date under Sections 380 and 457 of Indian Penal Code. However, having considered involvement of applicant in the present crime for causing simple injuries, this by itself would be no ground to reject the application. Hence, following order :

Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- with one surety in like amount. Applicant shall mark his presence with Police Station, Mouda, District Nagpur on 15th day of each month pending trial. The criminal application is accordingly allowed.

JUDGE

khj