

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

CRIMINAL APPLICATION (BA) NO.1110 OF 2016

Lekhpal @ Annu S/o Ashok Yadao

..VS..

The State of Maharashtra, through P.S.O. Wadgaon Road, Yavatmal

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

Court's or Judge's Order

Shri Firdos Mirza, Counsel for the applicant.
Shri C.A. Lokhande, Addll.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.
DATED : FEBRUARY 14, 2017.

One of the accused, involved in Crime No.401 of 2015 registered for the offences punishable under Sections 324, 307, 302, and 34 of the Indian Penal Code, has filed this application for bail.

Heard learned counsel for the applicant and learned Additional Public Prosecutor for the non-applicant/State.

It is submitted that out of three accused involved in this crime, who are real brothers, two are granted bail by learned Trial Judge. It is further contended that case of prosecution is based on single injury, alleged to be sustained by deceased in an assault involving applicant and his two brothers and as such

has contended that case of applicant at the most would fall for the lesser offence and not for the offence punishable for murder. It is also contended that after the incident, which occurred on 29.12.2015, initially offence was registered under Section 324 of the Indian Penal Code wherein on 17.2.2016 offence punishable under Section 307 of the Indian Penal Code is added and thus bail granted to applicant initially while offence under Section 326 was applied was cancelled. It is further contended that on 9.6.2016, after death of Akshay, offence under Section 302 of the Indian Penal Code is added in the present crime. Admittedly, applicant was protected from his arrest on registration of offence under Section 307 which was subsequently rejected and then had surrendered.

In the background of aforesaid facts, on perusal of report, lodged by mother of deceased, it is noted that the incident took place on 29.12.2015 at 5:00 p.m. and she claims to have witnessed the incident of assault on deceased at the hands of applicant by an iron pipe on head, legs, and hands. She further stated that deceased was also assaulted by applicant's brothers Hemant Yadao and Munna Yadao by iron pipe. In view of the contents of the report, thus it is noted that assault is alleged to be committed by three persons by iron pipe on the head, legs, and hands of deceased.

In view of the contents of report as aforesaid, perusal of injury report of the Government Hospital of the deceased reveals that on his being referred to said hospital on the day of the incident at 9:45 p.m., he is stated to have sustained one contusion lacerated wound over right side of occipital region and one below left knee. Thus, only two injuries are found to be caused. However, in view of the contents of report as aforesaid, complainant appears to have exaggerated the version as if, deceased would have been subjected to assault by three persons by an iron pipes, he is expected to have sustained more than two injuries as aforesaid.

From the statements of Shalini and Mangesh, it is revealed that while deceased Akshay was being taken to hospital in an auto-rickshaw, Akshay informed them about the incident involving applicants as his assailants by an iron pipe. However, complainant is silent about such disclosure made by deceased in the auto-rickshaw, while statement of Shalini does not substantiate case of prosecution in any manner as said appears to be hearsay. Admittedly, except for statements of complainant and above two witness, there are no other statements relied by the prosecution. Though statement of Anil Jayaswal, auto-rickshaw driver, is on record, he does not say that while he was taking injured to the hospital, he made any disclosure to his mother or to Mangesh as aforesaid.

In view of the facts as aforesaid, it, therefore, *prima facie* appears that complainant exaggerated her case of assault on deceased by three persons which is falsified by the injury report having two injuries sustained to Akshay. Moreover, on perusal of postmortem report, he was found to have scar of old wound on the right occipital region and scar of tracheotomy wound on the front of neck. On perusal of internal injuries to head, there are no fractures or deep injuries sustained to scalp.

Similarly, from the discharge card of the Government Medical College, Nagpur it is found that Akshay came to be discharged on 13.2.2016 as was found medically fit and was advised to have full meal, to bath regularly and on obtaining C.T. Scan of head, no obvious abrasion in brain parenchyma was noted and was not found to have sustained any abnormality. Therefore, it is *prima facie* found at the time of discharge, Akshay was physically fit having no any medical abnormality found sustained by him. As per the cause of death stated in the postmortem report it is noted that apart from the head injury with Diffuse Axonal injury, one of cause of death is Septicemia. In view of the said opinion, on reverting back to surface injuries found on the person of deceased it is noted that apart from two scalp wounds referred above, he also found to have sustained infected wound on his person

due to bedsores. In that view of the matter, there appears much substance when it is contended on behalf of applicant that after discharge of deceased on 13.2.2016, he was found medically fit and as such has no reason to be bedridden till his death which occurred after six months after the discharge during which period deceased had developed bedsores which were found infected at the time of postmortem. In that view of the matter, the case of the prosecution does not unfold as to what has happened between this period.

In that view of the matter and even on considering the case on merits and having considered the facts that co-accused are already released on bail by the Trial Court whose involvement is similar to that of applicant, the application is liable to be allowed on parity as well as on merits, as per the order below:

Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

While on bail, applicant shall mark presence with Wadgaon Road Police Station, District Yavatmal once in three months on first day of each such month.

The applicant shall submit proof of his residence with the investigating officer and shall update the same in the event of change in future.

Needless to say that observations as aforesaid are *prima facie* and learned Trial Judge shall

not get influenced with the same and shall independently evaluate the evidence at the time of Trial.

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 :- 16/2/2017