

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

CRIMINAL APPLICATION (BA) NO.1115 OF 2016

Nitin s/o Dilip Sonkamble and anr

..VS..

The State of Maharashtra, through Police Station Officer, Police Station Kingaon
Raja, District Buldana

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

Court's or Judge's Order

Shri R.M. Daga, Counsel for the applicants.
Mrs. K.H. Deshpande, Addl.P.P. for the non-applicant.

CORAM : P.N. DESHMUKH, J.
DATED : FEBRUARY 28, 2017.

This is an application by one of accused involved in Crime No.33 of 2016 registered for the offences punishable under Sections 302, 341, 143, 147, 148, 149, and 120-B of the Indian Penal Code for bail.

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

It is submitted on behalf of applicants that case of prosecution is based on oral dyeing declaration of deceased made to complainant Yogesh and Sonaji who are also eyewitnesses. It is further contended that from the documents filed with charge-sheet it is found that statement though oral is a firstly made to Sonaji his statement is recorded on 23.6.2016 in respect of incident dated 20.3.2016 and had contended that from his statement no involvement of applicants is

revealed as his statement is silent involving applicants in the incident, nor according to his statement, their names are stated by deceased. It is further contended that though report is lodged on the next day wherein names of applicants are stated by complainant claiming same to be disclosed by deceased to him, there is nothing on record to establish if deceased was conscious or physically fit to make any statement, as according to the case of prosecution he was lying on the spot through out the night intervening 20.3.2016 and 21.3.2016 and as per postmortem note has suffered compound fracture of tibia fibula and femur wounds which is stated to be cause of his death. It is, therefore contended that in view of statement of Sonaji, who have contacted deceased which is prior in point of time since do not implicate applicants in any manner, they are prayed to be released on bail.

Learned Additional Public Prosecutor has opposed application as per its reply on record and has submitted that from statement of complainant applicants' involvement is clearly established, however has admitted that there is nothing to establish if deceased was in a position to make statement to complainant after he was lying on the spot in injured condition, through out the night.

In view of submissions advanced as aforesaid, perusal of statement of Somaji reveals that

apart from alleged oral dyeing declaration given to him by deceased wherein admittedly neither of applicants are named, he also appears to be an witness to the incident wherein he has named as many as five other accused persons who had brought injured near his hotel and after leaving him has ran away. As per his statement, he therefore contacted injured when he disclosed names of assailants, however as stated above, neither of applicants are named by him. His statement further reveals that he had given information about above fact to his father informing him to inform family member of deceased.

From the report lodged by Yogesh, cousin brother of deceased, it is noted that accordingly information is given by father of Somaji and, therefore, he along with other visited spot and brought deceased to the hospital of one Dr. Dole who advised to take him to Jalna and thus while they were on way to hospital at Jalna, deceased had stated names of applicants along with other co-accused as their assailants. From the report it is further revealed that he was declared dead on admission in the hospital. Considering statement of Somaji as well as contents of report thus *prima facie* it is found that complainant had falsely involved both applicants as, had applicants would have been really involved in the incident, there was no reason for deceased not to disclose their names to Somaji who

have not met him earlier to complaint. Even Somaji does not claim to have seen applicants along with other co-accused named by him.

Moreover, there is nothing on record to establish if deceased was conscious or not in a position to make statement after lying in injured condition on the spot through out the night. Perusal of statement of Dr. Dole to whom deceased was referred on 21.3.2016 at 7:00 a.m. reveals that deceased had sustained fracture to his legs having wound from which blood was oozing due to which his blood pressure was lowered down. As per postmortem note, surface injuries noticed upon the person of deceased are by way of compound fracture left tibia and fibula, femur. Considering nature of injuries sustained by deceased, there has to be profused bleeding and thus possibility of deceased being in a conscious state of mind through out the night is doubtful, more particularly when there is nothing on record to establish physical condition of deceased. Even according to the postmortem note, probable cause of death is stated to be chardio respiratory arrest due to hypovolaemic shock due to multiple fractures and multiple open wounds.

In view of facts as aforesaid and as investigation is complete, application is liable to be allowed as *prima facie* applicant's involvement by complainant appears to be doubtful, hence the

following order:

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

While on bail, applicants shall mark their presence with Kingaon Raja Police Station, District Buldana once in three months on the first day of each such month, pending Trial and shall not tamper with evidence in any manner.

Applicants shall submit proof of their residence with the investigating officer and shall update the same in the event of change in future.

Criminal application is disposed of accordingly.

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 :- 3/3/2017