

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

CRIMINAL APPLICATION (BA) NO.2/2018

Wahid Khan s/o Rahman Khan

..VS..

State of Mah., thr. PSO Tahsil, Nagpur

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

Court's or Judge's Order

Shri R.K. Tiwari, Counsel for the applicant.

Shri N.R. Rode, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 8, 2018.

1. This is an application for bail.
2. Heard learned counsel Shri R.K. Tiwari for the applicant and learned Additional Public Prosecutor Shri N.R. Rode for the State.
3. The applicant is arrested in connection with Crime No.235 of 2017 registered with Tahsil Police Station, Nagpur for the offences punishable under Sections 302, 324, 341, and 504 read with Section 34 of the Indian Penal Code.
4. Learned Additional Public Prosecutor Shri N.R. Rode for the State submits that though the case is coming for the first time before the Court, he is ready with the matter inasmuch as the the charge-sheet is already filed and also he has called the charge-sheet from the investigating officer and is

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having full instructions in the matter.

5. Deceased is one Mohd. Naseem. The first information report is lodged by Mohd. Saleem, his brother. Prior to filing of the first information report on 27.7.2017, initially an accidental death was registered vide AD No.36/2017 on 26.7.2017 when the dead body of Mohd. Naseem was recovered from '*Nullah*' near guard-line.

6. As per the first information report, the applicant was habituated to various vices. The first information report was lodged on 27.7.2017 on the basis of the information which the first informant received from one Ashraf. According to the first information report, Ashraf disclosed to Mohd. Saleem that on 26.7.2017 the applicant, co-accused Javed, and one other accosted them on the ground that they have taken away the battery and, thereafter, they were tied and assaulted. It is also stated in the first information report that Ashraf informed that, thereafter, Ashraf and deceased anyhow got themselves freed and ran away from the spot. However, deceased fell into '*Nullah*' and died.

7. During the course of the investigation, the statement of one Deepak Jaiswal was recorded. This prosecution witness is working with co-accused Javed. His statement would reveal that the deceased and Ashraf were assaulted only by Javed. He is totally silent about assault made

by the applicant. He only attributes the presence of the applicant on the spot.

8. According to Ashraf's statement, he and deceased were assaulted by the applicant by rubber bidding. Whereas, Javed assaulted them by means of plastic rod. Though there are more than 10 injuries, all injuries are in the nature of contusions and abrasions. No fracture is noticed even during internal examination of the dead body.

9. The investigation is already over. The independent witness is not attributing any role of assault to the applicant. Further, not reporting the matter by Ashraf immediately and only recording of his statement after the first information report was recorded, *prima facie*, has to be weighed in favour of the applicant. Though the case is committed to the Sessions Court, the charge is not framed, is the submission of learned counsel for the parties.

10. Looking to the aforesaid nature of evidence as collected, *prima facie*, this Court is of the view that during the Trial the offence may be scaled down to the lesser offence.

11. In that view of the matter, this Court passes the following order:

ORDER

(a) The criminal application is allowed.

(b) Applicant Wahid Khan s/o Rahman Khan, be released on bail on his executing a P.R. Bond in the sum of Rs.25,000/- with two solvent sureties of the like amount in connection with Crime No.235 of 2017 registered with Tahsil Police Station, Nagpur for the offences punishable under Sections 302, 324, 341, and 504 read with Section 34 of the Indian Penal Code.

(c) The applicant shall attend the police station on 3rd Saturday of every month and shall be in the police station from 3:00 p.m. to 5:00 p.m., till culmination of the Trial.

(d) The applicant shall not influence over any of the prosecution witnesses.

(e) The observations made in the order are purely for the purposes of the deciding the application for bail and learned Judge of the Court below, who shall ultimately be conducting the Trial, shall not get influenced by any of the observations made herein.

(f) The criminal application is allowed and disposed of.

JUDGE

!! BRW !!