

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

CRIMINAL APPLICATION (BA) NO.33/2018

Pankaj s/o Ramuji Wankhade

..vs..

State of Mah., thr. PSO Selu, District Wardha

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

Court's or Judge's Order

.....
Shri Mahesh Rai, Counsel for the applicant.

Shri N.B. Jawade, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 19, 2018.

1. Heard learned counsel Shri Mahesh Rai for the applicant and learned Additional Public Prosecutor Shri N.B. Jawade for the State.

2. The applicant is arrested in connection with Crime No.208/2017 registered with Police Station Selu, District Wardha for the offences punishable under Sections 143, 144, 147, 148, 149, 326, 307, and 302 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act.

3. According to learned counsel Shri Mahesh Rai for the applicant, the investigation is over and the charge-sheet is filed and in fact the entire copy of the charge-sheet is placed on record. Learned counsel Shri Rai for the applicant submits that no specific role is attributed against the present applicant. He submits that

similarly circumstanced accused by name Ashwin Kamble is already released on bail by this Court (Coram : S.B. Shukre, J.) in Criminal Application No.1230/2017. He, therefore, submits that the application be considered favourably and the applicant be released on bail.

4. Per contra, learned Additional Public Prosecutor Shri N.B. Jawade for the State submits that the offence is very serious one. In the assault, one person by name Vipul lost his life. Whereas, 6 persons received injuries. He further submits that prosecution witnesses Aatish, Narendra, and Baby are attributing role against the applicant. He, therefore, submits that the application be rejected.

5. Before proceeding with merits and demerits of the submissions of both learned counsel for the parties, admitted position is that on the very same day, another offence was registered on the basis of the report lodged by Nandkishor who is one of the accused, against Mahananda, the first informant in the present crime and other injured persons.

6. It is clear from the say that the spot of the incident and the time of the incident is one and the same. Therefore, it is crystal clear that the incident has occurred in a group clash.

7. According to the prosecution, the reason for assault on each other was ongoing construction of the house of one of accused Prakash Wankhede. His construction was objected by the complainant's party and during that time assault took place.

8. Mahananda is the first informant whose report gives

rise to the present application. Her report is lodged on the very same day. In her report she has not attributed any specific role against the applicant. His presence is only pointed out.

9. Insofar as prosecution witness Aatish is concerned, according to this prosecution witness, the present applicant has given pipe blow on injured witness Narendra and also he has stated that the applicant assaulted on Mahananda so also the role i.e. attributed against the applicant by this prosecution witness is that he caught Vipul along with others.

10. Insofar as statement of this witness is concerned, this statement will have to be evaluated in the light of the statement of injured Narendra since according to Aatish, the present applicant gave iron rod blow on Narendra. Narendra's statement shows that he was given stick blow and not the iron blow that too on his back.

11. The injury certificate of Narendra is available on record. The injury certificate of Narendra shows that there are no injuries on his person corresponding to either iron rod or stick. Therefore, it is clear that to that extent the prosecution witnesses are making exaggerated version or they are exaggerating.

12. Insofar as assault on Mahananda is concerned vis-a-vis statement of Aatish, Mahananda, injured, is totally silent insofar as role of assault by the applicant. Thus, injured Mahananda is not taking the name of the applicant.

13. Insofar as holding of Vipul is concerned, it is clear

even from the statement of Aatish that Vipul was not caught only by the applicant but by other persons.

14. Insofar as another witness injured Sandhya is concerned, her statement is also silent in respect of the specific role against the applicant.

15. No doubt true that Baby, the prosecution witness attributes specific role against the applicant. However, it is to be noted that the incident in question has occurred on 19.3.2017. Whereas, her statement under Section 161 of the Code of Criminal Procedure was recorded by the investigating officer during the course of the investigation only on 28.3.2017. This witness Baby is not an injured witness. Therefore, there is a delay in recording her statement. When there is group clash and there are counter cases, in such circumstances recording statements of material witnesses belatedly assumes importance and it does not rule out embellishment at all.

16. Further, no weapon is seized from the applicant. Even according to learned Additional Public Prosecutor, from the applicant clothes on his person on the day of the incident are seized.

17. In view of the aforesaid nature of evidence available on record and when the question of intention as the applicant along with others is facing the prosecution under Section 149 also will have to be evaluated after full-dressed Trial. Therefore, in my view, the applicant has made out a case to be released on bail. Consequently, I

pass the following order:

ORDER

- (a) The criminal application is allowed.
- (b) Applicant Pankaj s/o Ramuji Wankhade, 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.208/2017 registered with Police Station Selu, District Wardha for the offences punishable under Sections 143, 144, 147, 148, 149, 326, 307, and 302 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act.
- (c) The applicant shall not stay at Khapri (Seloo), District Wardha, till the Trial is over.
- (d) The applicant is directed to furnish his address to the Court before whom the applicant will be executing this Bail Bonds. He shall also furnish his residential address to the investigating officer.
- (e) Learned Judge of the Court below, before whom the Bail Bonds will be executed, shall direct the

applicant to attend the police station which shall be nearest to the residence of the applicant and shall direct that the applicant shall attend the police station twice in a month i.e. on 1st and 3rd Saturdays of every month and shall be in the said police station from 2:00 p.m. to 5:00 p.m..

(f) It is made clear that the observations made in this order are purely for deciding the application for bail only and learned Judge of the Court below, who shall be trying the case, shall not get influenced by the observations made in this order.

(g) With this, the criminal application is allowed.

JUDGE

!! BRW !!

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