

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

CRIMINAL APPLICATION (BA) NO.45/2018

Pawan s/o Prakash Kurwade

..vs..

State of Mah., thr. PSO PS Paratwada, District Amravati

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

Court's or Judge's Order

.....
Shri K.B. Zinzarde, Counsel for the applicant.

Shri A.D. Sonak, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 18, 2018.

1. Heard learned counsel Shri K.B. Zinzarde for the applicant and learned Additional Public Prosecutor Shri A.D. Sonak for the State, *in extenso*. Both learned counsel for the parties to the application invited my attention to the relevant statement and material from the charge-sheet.

2. The applicant is the son of deceased Prakash. He is arrested on 17.7.2017 on the allegation that he has committed offence of patricide.

3. The investigating agency has already completed entire investigation and has filed the charge-sheet. There is no eyewitness to the alleged assault made by the applicant, as alleged.

4. The case of the prosecution is based on circumstantial evidences. Those circumstantial evidences are as under:

Initially, the present applicant went to the Paratwada

Police Station for lodging report against his father. Accordingly, NC No.623/2017 for the offences punishable under Sections 504 and 506 of the Indian Penal Code was registered against the deceased father.

According to the statement of grandfather of the applicant by name Dhanaji Dashrath Kurwade, after the applicant returned from the police station, the deceased was sitting on the Cot and again started abusing. Therefore, the applicant asked Dhanaji that he should go inside. Accordingly, he went inside and, thereafter, he heard the voice of scuffle and subsequently noticed the dead body of Prakash.

5. On the basis of the memorandum statement alleged weapon i.e. "Spade" is recovered.

6. Initially, the applicant went to the police station for lodging the report against his father since his father, who was habituated to drinks, used to pick-up quarrels and used to throw away utensils here and there, if his demand for money is not satisfied.

7. On 16.7.2017 when the applicant came from finishing his work, that time also deceased pick-up quarrel and used abusive words. That was the reason for the applicant to go to the police station for lodging the report against his father.

8. The incident is dated 16.7.2017. The statement of Dhanaji, the grandfather of the applicant, was recorded on 21.7.2017. His statement also shows that deceased Prakash, who was his son, was habituated to drinks and used to pick-up quarrels with

everybody and used to throw away utensils here and there, if his demand for money is not satisfied. His statement shows that on 16.7.2017 at about 7:30 p.m. deceased Prakash came to the house under the influence of liquor and started demanding money from Dhanaji and also from Nitin, the younger son of the deceased. When his demand was not fulfilling, he started throwing away utensils. At about 8:30 p.m., the applicant came in the house. That time, the said fact was informed to him by Dhanaji. That time, the applicant tried to pacify the deceased. However, the deceased was not in a mood to listen and continued his activities. That requires the applicant to visit to the police station.

9. The statement of Dhanaji shows that even after returning from the police station, when deceased was sitting on the Cot, he attempted to make assault on the applicant. It is further stated by him that Dhanaji went inside. After some time, he heard some noise. His statement further shows that on 17.7.2017 in the morning his wife Parwati noticed Prakash lying in an injured condition.

10. From the aforesaid, it is clear that at no point of time at least *prima facie* there was any intention on the part of the applicant to commit the murder of his father.

11. Thus, during the Trial, there is a possibility that the the offence may be scaled down to the lesser offence.

12. In that view of the matter, the applicant, who is in jail, need not to continue his further custodial presence. Hence, I pass

the following order:

ORDER

- (a) The criminal application is allowed.
- (b) Applicant Pawan s/o Prakash Kurwade, 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.389 of 2017 registered with Police Station Paratwada, District Amravati for the offences punishable under Sections 302 and 201 of the Indian Penal Code.
- (c) Needless to state that the observations made in this order are purely for deciding the application for grant of 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.
- (d) With this, the criminal application is allowed and disposed of.

JUDGE

!! BRW !!

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