

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

CRIMINAL APPLICATION (BA) NO.79/2018

Raju Hari Dhore ..vs.. State of Maharashtra through PSO P.S. Desaiganj,
Dist. Gadchiroli

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

Court's or Judge's orders.

Mr. U. Dastane, Advocate with Mr. U.P. Dable, Advocate for
the applicant.

Mr. N. B. Jawade, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 24, 2018

1. Heard Mr. U. Dastane, Advocate for the applicant
and Mr. N. B. Jawade, A.P.P. for non applicant-State.

2. The present application under Section 439 of the
Code of Criminal Procedure is for grant of bail. The
applicant is arrested in connection with Crime No.367/2017
registered with Police Station, Desaiganj, Dist. Gadchiroli for
an offence punishable under Sections 302, 201, 506 (2) read
with Section 34 of the Indian Penal Code.

3. The applicant is arrested on 27.08.2017 and since
then he is in jail. The investigating agency has already
completed its entire investigation and the charge-sheet is
already filed.

4. FIR is lodged by Digambar Zilpe, father of the

deceased Dinesh. The FIR is lodged on 24.08.2017 in respect of the occurrence dated 23.08.2017.

5. In the FIR, it is stated by the first informant that prior to about one year of the incident, a scuffle took place in between the deceased Dinesh and Shyamrao Anole who is accused no.2 in the present case, on account of liquor. In that scuffle, Shyamrao gave an axe blow on Dinesh's leg and head. It is stated in the report that son of Shyamrao, who is accused no.1 in the present crime and who is already released on bail by the Court below, pleaded with Dinesh that report should not be lodged with police. With the result, the said incident was not reported to police. As per the report, there was an agreement between the first informant and the family of Shyamrao and they will bear medical expenses of Dinesh. The FIR states that in respect of the incident of assault, the family of the first informant was required to spend Rs.7,500/- towards medical expenses. When the said amount was demanded by the deceased Dinesh at the time of Pola festival, at that time; Vinayak, accused no.1 clearly refused to pay the amount and gave a threat that he will be eliminated.

6. It is further the first information statement that on 23.08.2017, when the first informant was present in his house that time his son deceased Dinesh had been to Pan Shop of Gopal Kasare. At about 7.30 to 7.40 p.m., wife of Dinesh by name; Nita went to the said Pan Shop for fetching

her husband Dinesh. It is further the statement in the FIR that Nita came to the house and informed that she noticed that her husband Dinesh was being assaulted by Shyamrao and his two sons Vinayak and Raju, the present applicant by means of rod. Therefore, as per the FIR, Digambar proceeded towards the spot of occurrence. At that time, he noticed that Shyamrao and his two sons were leaving for their house along with the iron rod in their hand. It is the first information statement that he went to chowk for fetching his son. At that time, the present applicant tried to make assault on Nita. It is further the first information statement that when he reached to the spot, that time he noticed cellphone and footwear of the deceased. However, his body was not there. Therefore, with this he lodged a report that his son was assaulted since he demanded Rs.7500/- and thereafter his body was concealed somewhere by Shyamrao and his sons.

7. After the FIR was lodged, the investigating officer firstly, it appears that has arrested Shyamrao and during his police custody, he made disclosure statement and agreed to show the place where the body is concealed. Accordingly, on 24.08.2017 itself, body of Dinesh was found in jungle which is about 8 km. away form the spot of the occurrence.

8. According to the learned A.P.P. there are eye witnesses namely; Nita widow of Dinesh, Dipak, who on the date of incident was manning the pan shop of his brother

Gopal. Dipak's statement shows that Dinesh was assaulted by the accused persons. So far as the role attributed to the present applicant is concerned, he made assault by means of spade on his head. It is also stated in his report that thereafter he noticed that body of Dinesh was removed from the place by taking it on motorcycle.

9. The weapon which is attributed to the present applicant in the charge-sheet is spade. From the seizure memo, it is clear that it is seized from the spot itself. The post mortem report no doubt confirms that the injury no.1 is clearly attributable to the weapon; spade. However, what is important to note that the statement of Dipak is recorded on 25.08.2017. This clearly shows that there is a delay of two days in recording his statement. Similarly, statement of Nita, the widow is not recorded on the day when the FIR was lodged. However, her statement is recorded on 26.08.2017. Further the learned A.P.P. has heavily relied on the seizure of the blood stained clothes from the applicant. The seizure memo shows that the clothes were seized on 27.08.2017. Thus, even according to the prosecution, for good three days the applicant was roaming in the society with blood stained clothes on his person, which prima faice, is improbable.

10. Further, the FIR itself shows that the applicant along with other two co-accused were running away from the spot. Thus, there is contradiction in between the first

information statement and the statement of Dipak in respect of the removal of body.

11. In this background, the applicant has made out a case for grant of bail. Hence, following order is passed.

ORDER

- (i) Criminal Application No.79/2018 is allowed.
- (ii) Applicant-Raju Hari Dhore be released on bail in connection with Crime No.367/2017 registered with Police Station, Desaiganj, Dist. Gadchiroli for an offence punishable under Sections 302, 201, 506 (2) read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.50,000/- with two solvent sureties in the like amount.
- (iii) The applicant shall attend Police Station, Desaiganj once in a month i.e. on last Sunday of every month, till culmination of the trial.
- (iv) The observations made in this order are purely prima facie in nature and made only for deciding the application for grant of bail. Learned Judge of the trial Court shall not get influenced by any of the observations made in this order.

The application is disposed of.

JUDGE