

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

CRIMINAL APPLICATION (BA) NO.86/2018

Mahesh Mansaram Hazare ..vs.. State of Maharashtra through PSO P.S. Bhandara

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

Court's or Judge's orders.

Mr. K. S. Motwani, Advocate for applicant.

Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 6, 2018

1. Heard Mr. K. S. Motwani, Advocate for applicant and Mr. V. A. Thakare, A.P.P. for non applicant-State.

2. This is an application under Section 439 of the Code of Criminal Procedure for enlargement on bail. The applicant is arrested in connection with Crime No. 263/2017 registered with Police Station, Tumsar, Dist. Bhandara for an offence punishable under Sections 302, 143, 147, 149 of the Indian Penal Code, Sections 3 (2) (5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 135 of the Maharashtra Police Act.

The applicant is arrested on 23.08.2017 and since then he is in languishing in jail.

3. Mr. Motwani, learned counsel for the applicant submitted that this Court has released accused Vaibhav Dhomne and Kuldip Hatkar in Criminal Application No.

1224/2017. He also pointed out that another accused Prashant Hatwar is already released on bail by the trial Court. He submitted that the role attributed to the present applicant is identical to the role attributed to Vaibhav and Kuldip and therefore he be released on bail.

4. Mr. Thakare, learned A.P.P. submitted that the applicant may not be released on bail in view of the fact that in the prosecution case, there are three eye witnesses. They are Mangesh, Vinek and Sunil. He also submitted that the applicant is having past criminal record and blood stained clothes are seized from him. He submitted that the bail application be rejected.

5. The first informant is Mangesh. He is the eye witness. Another eye witness is Vinek, who is the brother of the deceased and one Sunil is also an eye witness. According to the FIR, it is alleged that on 21.08.2017, after closing his saloon, the first informant Mangesh, his friend one Yogesh Gaidhane, Rohit Sandekar-the deceased and Sunil Bisne, came when the first informant was sitting on a platform near pan shop of one Vasant Bhure. That time, he noticed that Yogesh was under the influence of liquor and therefore the first informant, deceased Rohit and Sunil took Yogesh to his house. During their travel, the present applicant and the other accused persons were seen to be sitting on a bench of one pan thela of one Mukesh Chachere. The FIR further states that at that time the accused Jitu

stopped the motorcycles which were plied by the first informant and the deceased. The co-accused Jitu opened talk with Yogesh. That time the deceased Rohit asked Yogesh that he has consumed liquor in excess quantity and therefore he should come to the house. That time, the accused Jitu took up quarrel with the deceased Rohit as to why he is intermediating the talks between him and Yogesh. After verbal exchanges, both of them started assaulting each other. That time, they were separated by their friends namely; the first informant at one side and other accused persons on other side. Thereafter, the first informant and the deceased along with Sunil took Yogesh to his house. After arrival at Yogesh's house, when they were returning back near Hanuman temple, the deceased Rohit stopped his motorcycle and asked accused Jitu that prior to some time, he was talking too much and what is his wish. At that time, the accused Jitu quipped to the deceased Rohit that he is unnecessarily getting raised and gave a slap to the deceased. Thereafter the deceased took out his mobile phone and was to make a phone call, that time, accused Jitu gave 3-4 blows of knife on the person of Rohit. According to the FIR, that time, the present applicant and the accused persons who are released on bail, tried to give fist blows to Rohit. Rohit succumbed to injuries which were caused due to knife.

6. Thus, the FIR though attributes role to the present applicant, it is restricted that he has given fist blows only. Similarly, the statement of other eye witnesses do not

give any other version in respect of the role attributed to the present applicant by the first informant. What is important to note is that even according to these three eye witnesses, fist blows were not given after the knife blows were inflicted nor it is the case of the prosecution that the applicant or other co-accused persons caught hold of the deceased and thereafter Jitu gave knife blows. Vaibhav and Kuldip are already released on bail by this Court looking to the role they have played in the assault. The role attributed to the present applicant is identical and similar to the role attributed to Vaibhav and Kuldip. Therefore, the applicant is entitled to get benefit of principal of parity.

7. Insofar as the blood stained clothes are concerned, the applicant is arrested on 23.08.2017 and his blood stained clothes are shown to have been seized on 24.08.2017. Thus, at this stage, in my opinion, it cannot be held as an incriminating circumstance at least prima facie for deciding the present application.

8. Insofar as the criminal antecedents are concerned, the applicant, though was convicted for an offence punishable under Section 302 of the IPC by the learned Sessions Judge on earlier occasion, he was acquitted by this Court in an appeal preferred by them as it could be seen from the reply filed by the prosecution itself and according to the learned A.P.P. the said acquittal too is not questioned before the Hon'ble Apex Court.

9. Insofar as other offences are concerned, those are of the year 2014. Further, merely because there are certain offences pending against the applicant, which are minor in nature in comparison to the offence under Section 302 of the IPC especially when the role attributed to the present applicant is not very serious one, the criminal antecedents in my opinion, cannot obstruct the personal liberty of the present applicant.

7. In that view of the matter, following order is passed.

ORDER

(i) Criminal Application No.86/2018 is allowed.

(ii) Applicant-Mahesh s/o Mansaram Hazare be released on bail in connection with Crime No.263/2017 registered with Police Station, Tumsar, Dist. Bhandara for an offence punishable under Sections 302, 143, 147, 149 of the Indian Penal Code, Sections 3 (2) (5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 135 of the Maharashtra Police Act on he executing P.R. Bond in the sum of Rs.25,000/- with two solvent sureties in the like amount.

(iii) The applicant shall attend Police Station once in a week i.e. on every Saturday for a period of one month after he is released on bail and on completion of one month, the

applicant shall attend Police Station on last Monday of every month till the culmination of trial. The applicant shall attend Police Station on the said days between 02.00 p.m to 05.00 p.m.

(iv) The observations made in the order are prima facie in nature and made only for the purpose of deciding the application for grant of bail. The learned trial Court shall not get influenced by any of the observations made in this order.

JUDGE

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