

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

CRIMINAL APPLICATION (BA) NO.113/2018

Bhivrao s/o Raghunath Dhangune

..vs..

State of Mah., thr. PSO Duggipar, Duggipar PS, District Gondia

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

Court's or Judge's Order

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Shri H.P. Lingayat, Counsel for the applicant

Shri T.A. Mirza, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 8, 2018.

1. Heard learned counsel Shri H.P. Lingayat for the applicant and learned Additional Public Prosecutor Shri T.A. Mirza for State.
2. The applicant is arrested on 9.5.2017 in connection with Crime No.135/2017 registered against him with Police Station Duggipar, District Gondia for the offence punishable under Section 302 of the Indian Penal Code.
3. The applicant is arrested on 9.5.2017 that is the date of the incident and since then he is in jail.
4. The investigation is already over and the charge-sheet is already filed.
5. The First Information Report (F.I.R.) is lodged by Police Patil Subhash Meshram. He is not an eyewitness. He got an information from one Premlal that the present applicant has committed murder of

Bhaskar.

6. After the F.I.R. was registered, the criminal law was set into motion. The applicant was arrested. During the course of the investigation, the investigating officer found that there are two eyewitnesses to the incident. They are the wife of the applicant and mother-in-law of the applicant. Their names are Pratibha and Dewaka. Their statements are at page Nos.88 and 89 of the compilation.

7. That as per the statements of these two eyewitnesses, deceased came to the house of the applicant in the night of 9.5.2017. Thereafter, he demanded tea from wife of the applicant, Pratibha. When she went to kitchen for the same, deceased picked-up quarrel with the applicant and claimed that the house in which the applicant is residing belongs to him and also rushed towards the applicant with intention of assault. As per eyewitness account, that time applicant picked-up scissor which was lying on table and gave stab blow.

8. With this type of evidence available on record, it is crystal clear that the incident in question has occurred in a spur of moment. Initially, it is the deceased who tried to make assault on the applicant.

9. Since the incident has occurred in a spur of moment and after assault the applicant has not taken any undue advantage, in my view, *prima facie*, during the course of the Trial, the offence may be scaled down from the offence punishable under Section 302 of the Indian Penal Code to any lesser offence which may not attract the punishment

for life or death.

10. In view of nature of the evidence available against the applicant, in my view, the applicant who is behind the bars since 9.5.2017 need not continue his custodial presence further. That leads me to pass the following order:

ORDER

(a) The criminal application is allowed.

(b) Applicant-Bhivrao s/o Raghunath Dhangune, be released on bail on his executing a P.R. Bond in the sum of Rs.25,000/- with one solvent surety of the like amount in connection with Crime No.135/2017 registered against him with Police Station Duggipar, District Gondia for the offence punishable under Section 302 of the Indian Penal Code.

(c) It is made clear 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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