

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

CRIMINAL APPLICATION (BA) NO.116/2018

Sagar @ Daddu s/o Prakash Pujari

..vs..

The State of Mah., thr. PSO PS Ajani, District Nagpur

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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 C.R. Thakur, Counsel for the applicant.

Shri Nitin Rao, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : FEBRUARY 8, 2018.

1. Heard learned counsel Shri C.R. Thakur for the applicant and learned Additional Public Prosecutor Shri Nitin Rao for the State.
2. The applicant, who is arrested on 23.8.2016 in connection with Crime No.86/2016 registered with Police Station Ajani, District Nagpur for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act and under Section 135 of the Bombay Police Act, is before this Court by moving the present application under Section 439 of the Code of Criminal Procedure.
3. The investigation is over and the charge-sheet is already filed.
4. The applicant is shown as accused No.1 in the final report. Accused No.3 Akash is already released on bail by the Trial Court.

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5. The First Information Report (FIR) is lodged by Chandramani Ganvir, who is the father of deceased Vinaychandra. As per the FIR, the deceased used to work with one Pravin Mane. His FIR dated 12.3.2016 shows that on 11.3.2016 in the night hours his daughter received a phone-call from Swapnil who is ultimately shown as an eyewitness to the incident. During the said phone-call, it was informed that somebody has assaulted on Pappu and he has taken him to the Medical Hospital. On getting this information, the first informant and his daughter went to the Medical Hospital. There they noticed that there were injuries on forehead and abdomen of the deceased and he was declared dead. In the FIR suspicion was raised against Swapnil by the first informant that he is the person who called the deceased to a Bar. According to the FIR, the first informant was not satisfied about the answers given by Swapnil and, therefore, he raised suspicion. However, in his supplementary statement dated 25.8.2016 he has stated that the applicant and other persons have committed murder of his son.

6. During the course of investigation, on 12.3.2016 the investigation agency has recorded statements of one Harshal, Swapnil, Vinay, Amol and Rakesh and according to the prosecution, these persons are the eyewitnesses to the incident of assault.

7. The statements of all these witnesses are perused by this Court with the assistance of learned counsel Shri C.R. Thakur for the applicant and learned Additional Public Prosecutor Shri Nitin Rao for the State.

8. From the statements, it is clear that none of these witnesses was knowing either the applicant or other accused persons. Their statements show that the person who was wearing white colour shirt has given stab blow. Their 161 statement shows that even the deceased was also not knowing the accused and while in scuffle the incident has occurred.

9. The test identification parade is held on 17.7.2016. In the test identification parade eyewitnesses Harshal, Swapnil and Amol identified the applicant. However, Vinay and Rakesh did not identify the applicant.

10. What is important to note is that after the test identification parade, supplementary statements of witnesses who identified the applicant are not recorded to show that the applicant was the person who was wearing the white colour shirt and he is the person who gave knife blow.

11. Further, statement of Chandramani, first informant, which is recorded on 28.8.2016, shows that he got information about the arrest of the accused persons from news items appearing in the newspaper and, therefore, he went to the Ajani Police Station and there the police informed him that the applicant and other accused persons are assailants. His statement further shows that the police informed that when the accused persons were making their entry in Beer Bar and at the time when the deceased was taking exit from the Beer Bar, there was an unintentional push and in that verbal altercation took place and

the accused persons assaulted by means of weapon.

12. From the aforesaid statements of the eyewitnesses, it is not clear at least *prima facie* that the applicant is the person who has given the stab blow. The investigation is already over and the charge-sheet is already filed. The sessions trial is not proceeding since the charge is yet to be framed. In view of that, the applicant can be released on bail on imposing certain conditions. That leads me to pass the following order:

ORDER

- (a) The criminal application is allowed.
- (b) Applicant-Sagar @ Daddu s/o Prakash Pujari, 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.86/2016 registered with Police Station Ajani, District Nagpur for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act and under Section 135 of the Bombay Police Act.
- (c) The applicant shall attend the police station twice a month i.e. on 1st and 3rd Saturdays and shall be in the police station from 1:00 p.m. to 5:00 p.m., till culmination of the Trial.

(d) The applicant shall not cause any type of threat to any of the prosecution witnesses.

(e) 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.

(f) With this, the criminal application is allowed and disposed.

JUDGE

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