

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

Criminal Application (BA) No. 230 of 2018

Ganesh v. State of Maharashtra

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

Court's or Judge's orders

Shri R. M. Daga, Advocate and Shri Mohit
Khajanchi, Advocate with him for applicant
Shri A. V. Palshikar, APP for respondent-State

CORAM : S. B. Shukre, J

DATE : 6.4.2018

Heard. Perused the reply of prosecution and charge-sheet.

This is a case wherein there is a First Information Report filed against this applicant and 28 others in respect of the incident which occurred at about 09.30 hrs of 1.4.2017 on Vijasan Tank near Bhadrawati. There is also a counter FIR lodged about six hours of the FIR filed against this applicant and others. On going through these FIRs, it is seen that the incident, which was in the nature of a violent clash between the two groups, one belonging to this applicant the members of which were into the trade of water-nuts and the other group which was into the trade of fishing, both trades being carried out from Vijasan Tank, was over the issue of respective rights to extract water-nuts or fish from the said tank. Of course, the injuries that were sustained by some of the members of the applicant's group, in terms of number and severity as compared to the injuries suffered by the group of the complainant in the crime registered against the applicant and 28 others were on the lower end. One member of the group of the complainant – Jagdish Mandhare, even died in

this crime. His death occurred in the hospital. It is alleged that axe blows were dealt to him by this applicant. There are also allegations that remaining 28 accused persons in the present crime had rained stick blows on deceased Jagdish as well as the other members of the group of the complainant.

Lodging of FIR and counter FIR in relation to one and the same incide is *prima facie* suggestive of the fact, at least at this stage, that it is difficult to ascertain as to who drew the first blood.

The post-mortem report of deceased Jagdish shows that in the opinion of the doctor conducting the post-mortem, the probable cause of death was head injury and blunt trauma of the chest. Perusal of the statements of witnesses would show that injuries caused to the head of the deceased have been attributed by them to dealing of axe blows to the head of the deceased by this applicant. The post-mortem report also shows multiple injuries including fracture of 1st to 7th rib on right side. These injuries are not attributable to this applicant, rather, *prima facie* they are attributable to the other co-accused who joined hands with this applicant in showering blows by sticks upon Jagdish. However, the other accused persons, 28 in number, all have been released on regular bail either by the Sessions Court or by this Court. These orders have not been challenged by the prosecution, as informed by learned counsel for the applicant.

I have already referred to the probable cause of death of Jagdish as disclosed in the post-mortem report. It reveals a composite cause of death. One part is of head injury and the other part is blunt trauma of the chest. The other part is, *prima facie*, not attributable to this applicant and it pertains to the other accused persons. In this fact situation, if the other persons have been granted bail, I do not think that

the benefit of principle of parity to this applicant especially at the stage when the investigation is over with the filing of charge-sheet in the present case.

In the result, I am inclined to grant this application conditionally.

Application is allowed. It is directed that the applicant be released on bail in Crime No. 389/2017 registered with Police Station, Bhadrawati for the offences punishable under Sections 143, 147, 148, 149, 302, 307 and 323 of the Indian Penal Code on his furnishing PR Bond of Rs. 50,000/- together with one solvent surety in the like sum, on the following conditions :

(1) Applicant shall not reside either at Vijasan or Bhadrawati and shall stay at least 50 kms away from those places till the conclusion of the trial. The new address along with telephone/cellphone number shall be furnished to the concerned Police Station as also the Sessions Court in charge of the trial of the case against this applicant and other, within two weeks from the date of his release.

(2) Applicant shall regularly attend the trial Court on all dates of hearing as may be fixed in the trial.

(3) Applicant shall not tamper with the prosecution evidence in any manner.

Disposed of.

JUDGE

joshi