

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

CRIMINAL APPLICATION (BA) NO.304 OF 2018

(Rupesh s/o Devidas Kurwale ..vs.. The State of Maharashtra, through PSO, PS Shegaon City, District
Buldhana)

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

Court's or Judge's orders

Shri A.K. Bhangde, Counsel for the applicant,
Shri V.A. Thakare, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 19-06-2018

The applicant is in custody since 16-8-2016 in connection with Crime 303/2016 registered with Shegaon City Police Station, District Buldhana for offences punishable under Sections 302, 504 and 506 read with Section 34 of the Indian Penal Code.

2. The offence is registered on the basis of report dated 16-8-2016 lodged by the wife of the deceased. The case of the prosecution, as can be culled out at this stage, from the first information report and the statements of witnesses is that the applicant and co-accused Rajesh Bodade objected to the deceased begging. The verbal altercations took an early turn and the deceased was assaulted by the iron stick which the deceased used to carry since he was physically challenged.

3. This Court has released co-accused Rajesh Bodade on bail. This Court *inter alia* took into consideration that

the identification of the accused by Dnyaneshwar on the basis of CCTV footage would have to be considered during the trial since concededly the certificate under Section 65-B of the Indian Evidence Act is not filed on record. In so far as the identification by witness Dnyaneshwar is concerned, the case of the applicant cannot be distinguished from that of Rajesh Bodade who is released on bail.

4. The only difference between the situation of the applicant and that of Rajesh Bodade is that while witness Ganesh did not identify Rajesh Bodade in the test identification parade, the applicant is duly identified. It is not the case of the prosecution that there is any other material against the applicant. The iron stick used by the deceased and which is said to be the weapon of assault is recovered and seized from the spot.

5. Taking a holistic view of the material on record, notwithstanding that the applicant is identified by witness Ganesh, I do not consider continued incarceration of the applicant in custody warranted. Several submissions were made by the learned Counsel for the applicant questioning the probative value of the identification done. It is neither necessary nor appropriate to make any observation since it is ultimately for the trial to consider the test identification and the effect and implication of the attending circumstances.

6. The application is allowed.
7. The applicant be released on bail on executing personal bond of Rs.15,000/- alongwith one solvent surety of the life amount.
8. The applicant shall attend the Shegaon City Police Station as and when called by the Investigating Officer.
9. The applicant shall not tamper with the evidence nor shall attempt to influence the witnesses in any manner.

JUDGE

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