

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

Criminal Application [BA] No.353 of 2018

Suraj s/o Deorao Gomekar

vs.

State of Maharashtra, through P.S.O. Kanhan, Tahsil & District Nagpur.

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

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Court's or Judge's Orders

*Shri D.V. Chauhan, Advocate for the Applicant.
Shri P.S. Tembhare, A.P.P. for the Non-Applicant/State.*

CORAM : S.B. SHUKRE, J.
DATE : 2nd MAY, 2018.

Heard.

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

It is seen that this is the case wherein there is an F.I.R. and also a counter F.I.R. in respect of the same incident. The first F.I.R. has been filed by Gopal Singh, the father of deceased-Shital Singh @ Mitthu Singh against this applicant and four more accused. It is registered as Crime No.139/2014. The other F.I.R., which is later in point of time, is registered as Crime No. 140/2014 and has been filed by this applicant against the deceased and four other accused persons belonging to the group of the deceased. In the F.I.R. registered against this applicant and others (Crime No.139/2014), one of the offences involved is of Section 302 of Indian Penal Code relating to intentionally killing of Shital Singh. One of the offences involved in the second F.I.R. (Crime No.140/2014), is such, which is punishable under Section 307 of Indian Penal Code. In the second F.I.R., the allegation is that this applicant was assaulted on his head by means of sword by deceased Shital

Singh and the injury was of grievous nature and the manner in which it was caused has been alleged to be nothing but an attempt to commit murder of this applicant.

In the crime registered against the party of the deceased person, all the five accused have been granted regular bail by the Sessions Court except for one accused, who has been released on bail by this Court, as submitted at the bar by the learned Counsel for the applicant.

In the first F.I.R., which is Crime No.139/2014, registered against this applicant and four others, one co-accused Pintu has been granted regular bail by this Court, while the other co-accused Sharad has been granted regular bail by the Sessions Court, which bail was later on cancelled by this Court and presently it is stated that the order of cancellation of bail is under challenge before the Hon'ble Apex Court.

So far as this applicant is concerned, this is the first bail application filed by him before this Court and there is no dispute about this fact. There is also no dispute about the fact that bail granted by this Court to co-accused Pintu on 20th July, 2017 has now attained finality, as it has not been challenged by the prosecution or the complainant.

Co-accused Pintu was the person, who, it is alleged, immobilized Sunny Singh, who was present at the spot of incident and who had tried to come to the rescue of his brother Shital Singh. It appears that as accused-Pintu was immobilized by the other co-accused, the severity of the assault made upon deceased Shital Singh @ Mitthu Singh could be

increased further. If such an act had not been done by the other co-accused, *prima facie* and probably, the situation may have been different.

The allegation made against this applicant in a very specific manner and almost in unison by all the witnesses is that this applicant fired a gunshot at deceased Shital Singh and it were the gunshot injury suffered by the deceased in his chest which brought about his death. It is submitted by the prosecution that the gun, which was a single barrel breech loading countrymade handgun allegedly used for firing the bullet has been recovered and seized at the instance of this applicant. This seizure has been relied upon heavily by the prosecution against this applicant. But the report of the ballistic expert, *prima facie*, does not support the theory that the countrymade handgun recovered at the instance of this applicant was used by him for firing a bullet at deceased Shital Singh. The ballistic report discloses at this stage that the bullet retrieved from the dead body of Shital Singh was not comparable to the bullet test fired from this handgun and accordingly the ballistic expert has opined, "*the 7.65MM pistol bullet retrieved from the body of deceased Mitthu Gopal Singh cannot be fired through the countrymade handgun in exhibit 1 of M.L. Case No.BLn-193/14*"

Considering the fact that the opinion of the ballistic expert, at this stage, does not *prima facie* support the prosecution's specific allegation made against this applicant and the other facts, such as, even this applicant had suffered grievous injuries in the quarrel that took place between these two groups and

one of the co-accused Pintu, who had also played an active role in the whole incident, has been granted bail by this Court, I am of the view that now this applicant is entitled to be released on bail.

Accordingly, the application is allowed and it is directed that the applicant be released on bail on his furnishing a P.R. Bond of Rs.1,00,000/- (Rupees One Lakh) together with one solvent surety in the like sum on the following conditions :

- i. The applicant shall not stay within the limits of Police Station Kanhan and shall not enter the Kanhan city till conclusion of the trial and till that time, shall stay at least 50 kms. away from Kanhan City.
- ii. The applicant shall furnish his new residential address and telephone/mobile numbers to the Investigating Officer and also to the Court within seven days of his release from the Jail.
- iii. The applicant shall not tamper with the prosecution witnesses in any manner.
- iv. The applicant shall co-operate with the trial Court in expeditious disposal of the case.

The application is disposed of.

JUDGE

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