

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

CRIMINAL APPLICATION (BA) NO.592 OF 2018

(Yogesh s/o Dighambar Tayade ..vs.. State of Maharashtra, through PSO, PS Malkapur (Gramin))

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

Court's or Judge's orders

Shri S.V. Sirpurkar, Counsel for the applicant,
Shri N.H. Joshi, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 11-07-2018

The applicant, who is in custody since 31-12-2017 in connection with Crime 242/2017 registered with Police Station Malkapur (Rural) for offences punishable under Sections 302 and 498-A read with Section 34 of the Indian Penal Code is seeking enlargement on bail.

2. Along with the applicant, his mother Nirmala and uncle Pralhad are implicated in the crime. While Nirmala is released on regular bail, this Court granted anticipatory bail to Pralhad.

3. The case of the prosecution is that the applicant and the other co-accused assaulted the wife of the applicant Smt. Rekha at 10-30 a.m. or thereabout on 31-12-2017 causing her death. The fatal injury appears to be a blow inflicted on the neck, which is so severe in intensity that the neck was half severed.

4. Concededly, there is no eyewitness to the crime.

The submission of the learned Counsel Shri Sirpurkar is that the weapons have been seized from the spot and the alleged blood stained clothes of the applicant are seized at the instance of co-accused Nirmala. The submission is, that there is no recovery at the instance of the applicant.

5. It is disturbing to note, that no attempt was apparently made to obtain and compare the finger prints on the weapons of offence. This Court has noticed that rarely, if at all, any attempt is made to obtain forensic evidence in the nature of finger prints from the scene of crime.

6. In so far as the present case is concerned, the material which is pressed in service is that the applicant and other two co-accused absconded. Whether they absconded and if they did, what is the inference to be drawn is left to the trial Court. At least, at this stage, nothing is brought to my notice to connect the applicant with the crime other than the fact that the heinous and gruesome assault took place in the house of the applicant. Whether the deceased died in the exclusive custody of the applicant or whether there is any possibility of a third person intervention who may have had access to the house is again something for the trial Court to look into.

7. In the teeth of the material on record, I do not see any justification for the continued incarceration of the

applicant in Jail which would only be a pretrial punishment.

8. The application is allowed. The applicant be released on bail on furnishing personal bond of Rs.15,000/- with one solvent surety of the like amount.

9. The applicant shall not tamper with the evidence nor shall attempt to influence the witnesses in any manner.

10. The Superintendent of Police, Buldhana is directed to file an affidavit in this Court within a week explaining why no attempt was made to obtain the finger prints on the weapons of offence. The affidavit shall also give the details of the crimes in which effort was made to obtain finger prints from the scene of crime.

11. List the application on 23-7-2018 to consider the affidavit of the Superintendent of Police.

12. Hamdast is granted.

13. Steno copy of this order be furnished to the learned Additional Public Prosecutor as per rules.

JUDGE