

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

Criminal Application [APPA] No.385 of 2018
in
Criminal Appeal No.265 of 2018

Pankaj Vitthalrao Deotare

vs.

The State of Maharashtra, through P.S.O. Hinganghat, District Wardha

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

Court's or Judge's Orders

Shri S.V. Sirpurkar, Advocate for the Applicant/Appellant.
Mrs. S.S. Jachak, A.P.P. for the Non-Applciant/State.

CORAM : S.B. SHUKRE & S.M. MODAK, JJ.

DATE : 16th JANUARY, 2019.

Heard.

We have considered the evidence of two prosecutions witnesses i.e. PW-2 and PW-3, on whose evidence, the whole prosecution case depends for reaching it's goal. Of course, the goal even for the prosecution would not be just to secure conviction for the sake of conviction, but the goal for the prosecution would always be to sub-serve the cause of justice. From this view point, we have examined the prosecution evidence brought on record. We have also solicited the assistance of the learned A.P.P. for fulfilling the larger goal of securing justice and we have been adequately assisted in the matter by the learned A.P.P.

PW-2 Shobha Bawane, the mother of deceased, has given certain admissions creating the doubt about her identifying the accused persons in the

Court and, admittedly, there is no test identification parade held in this case and the reason is only known to the Investigating Officer, who, we feel, owes an explanation to the Court of justice for his failure to get conducted the test identification parade and that would be appropriately addressed by this Court at the time of final hearing. But, for the purpose of deciding this application, suffice it to say that a major lacuna has been left in the investigation of this case by the Investigating Officer and this lacuna has been just pointed out by us.

If there is a doubt about the identification of this applicant, we must look for other facts established on record so as to assure us, at least in a *prima facie* manner, that the finding of guilt in so far as this applicant is concerned is proper. But, unfortunately, no evidence giving such assurance to us at this stage could be seen by us nor has been pointed out to us by the learned A.P.P. Admittedly, no incriminating recovery has been made from this applicant. Of course, there is an evidence of PW-3 Rahemankha, the friend of the deceased, about the deceased telling him just one day prior to the incident his apprehension about the danger to his life from all the accused persons including this applicant, but he was not an eye witness to the incident nor was a witness to any fact or circumstance, which could establish *prima faice* link of this applicant with the other assailants in commission of the heinous crime. So, at this stage, the evidence of PW-3 Rahemankha does not lead us anywhere.

Apart from what is discussed in the earlier paragraphs, we find no other evidence available on record to enable us to reject this application.

In this view of the matter, we are inclined to allow the application and it is allowed accordingly. The substantive sentences of imprisonment awarded to this applicant Pankaj Vitthalrao Deotare are hereby suspended till final disposal of the appeal, provided fine are duly paid and till that time, if fine amounts are paid, it is directed that the appellant/applicant be released on bail on his furnishing a P.R. Bond of Rs.50,000/- together with one solvent surety in the like sum on condition that he shall appear before this Court as and when directed.

The application is disposed of accordingly.

JUDGE

JUDGE

*sandesh