

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

Criminal Application (ABA) No. 238 of 2019

(Milind s/o Himmat Athwale Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Smt. S.W. Deshpande, Advocate for the applicant
Mrs. M. H. Deshmukh, APP for the State/respondent

CORAM : M. G. GIRATKAR, J.

DATE : 24/4/2019

Heard learned Advocate Smt. Deshpande for the applicant. She has submitted that the applicant is a teacher. He was on duty on the day of incident. Report is lodged after 2 months from the time of incident. It was an accident and not a murder. Therefore, prayed for grant of anticipatory bail. Learned counsel also submitted that statement of witnesses who informed incident after the death of deceased did not recorded by the police.

2. Mrs. Deshmukh, learned Additional Public Prosecutor for the State has strongly objected the application.

3. Perused the say filed by Investigating Officer before the Additional Sessions Judge, Court No. 2, Achalpur. From the perusal of say, it appears that there are eye-witnesses of the incident. Applicant is specifically named in the FIR as one of the assailants. The accused committed a crime by beating deceased by fists and stick etc. mercilessly.

4. Smt. Deshpande, learned counsel for the applicant has submitted that injuries on the dead body were only on right side. It was an accident and not a murder.

5. At this stage, it can not be said that it was an accident. As per the say of Investigating Officer, eye-witnesses have told about the involvement of the present applicant. One of the accused approached this court for anticipatory bail and his bail was rejected by this court. Offence punishable under Section 302 read with Section 34 of IPC are serious offence registered against the applicant. In so far as plea of alibi is concerned, it is to be proved by the accused during the evidence. At this stage, it can not be said that accused was not present at the time of incident. Say of I.O. before the Additional Sessions Judge, Achalpur shows that applicant was involved in the crime and there are eye-witnesses of the incident. Their statements are recorded by I.O.. While granting anticipatory bail as per provisions of Section 438 of Cr.P.C., the court has to consider seriousness of offence. Offence punishable under Section 302 of IPC is serious in nature. Hence, applicant is not entitled for any protection. The application is rejected.

JUDGE