

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

Criminal Application (BA) No. 363 of 2019

Umesh Rathod

Vs.

State through P.S. Chandur Railway, Dist. Amravati

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

Court's or Judge's orders

Mr. A.D. Sonak, Advocate for applicant.
Mr. J.Y. Ghrude, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JUNE 25, 2019

The applicant herein has approached this Court for grant of bail. The allegation against the applicant is that he along with other accused persons assaulted police personnel, resulting in the death of one and injuries to the other, leading to registration of FIR dated 27/5/2018 for the offences punishable under Sections 302 and 307 R/w 34 of the Indian Penal Code.

2. The learned counsel for the applicant has submitted that he has been behind the bars since 28/5/2018 and that eight of the ten accused persons have been enlarged on bail. It is submitted that perusal of initial statement given by the injured police personnel suggested that assault in the present case took place only by use of sticks and that there was no

mention of another weapon, while it is claimed that upon investigation it reveals that apart from sticks, axe and stones were used in the assault at the time of the incident. It is further pointed out that a perusal of injuries reported to have been suffered by the injured police personnel do not indicate any such injury by use of axe, thereby pointing towards improvements and omissions in the version of the prosecution. It is contended that there is nothing brought on record to show that the deceased and the injured police personnel were on duty at the time incident, thereby indicating that the very genesis of the case of the prosecution is doubtful. On this basis, it is contended that the present application deserves to be allowed, particularly in the light of fact that the chargesheet is filed on 20/8/2018 and there has been no progress in the trial proceedings.

3. On the other hand, the learned APP has contended that the present case concerns serious offence of assault on police personnel and use of weapons like axe and stones. The learned APP has brought on record material to indicate that the applicant in the present case is the main accused and that he had history of having committed offences under the Maharashtra Prohibition Act, 1949. It is contended that the post-mortem report of the deceased clearly indicates serious injuries in form of piercing wound and chop wound, supporting the case of the

prosecution that axe was used as a weapon in the present case. On this basis, the learned APP submitted that the application deserves to be rejected.

4. Having heard the rival parties and perusal of material brought on record, it appears that the applicant and other accused are said to have been committed serious offences under Sections 302, 307 of the Indian Penal Code. There is an injured witness and one of the victims succumbed to injuries suffered in the said incident. The contention raised on behalf of the applicant that the police personnel were not on official duty can certainly be decided at the at stage of trial, but for grant or refusal of bail, what is more significant is the role attributed to the applicant. A perusal of post-mortem report in the present case shows that there were serious injuries suffered by the deceased leading to his death. The list of injuries given in the post-mortem report includes chop wound and piercing wound, apart from peeling of skin over right side of upper-limb of the victim. Such injuries are certainly attributable to the use of axe, as claimed by the prosecution. The main role in the present case is attributed to the applicant and the material brought on record does indicate his involvement in the severe assault that was launched against the victim.

5. The Sessions Court in its order has specifically referred to the fact that the brother of the

accused persons had threatened the witnesses in the present case, indicating that there is a clear possibility of witnesses being influenced if the applicant is enlarged on bail. The applicant cannot claim parity with the other accused persons who were enlarged on bail and, therefore, it is found that the present application cannot be allowed. Accordingly, the application is dismissed.

6. Since the learned counsel for the applicant has pointed out that the chargesheet in this case has been filed as far back as on 28th August, 2018, the Trial Court is directed to expedite the Trial Court proceedings and to make an endeavour to complete the trial within a period of one year from today.

JUDGE