

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

Criminal Application (BA) No. 410 of 2019

Khanji Mangal Dhikar

Vs.

State of Mah. Through P.S. Chikhaldara 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. Mir Nagman Ali, Advocate for applicant.
Mr. A.D. Sonak, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JUNE 18, 2019

The applicant has approached this Court for grant of bail in respect of FIR dated 17/11/2018, filed against him and three other accused persons for allegedly having assaulted the father of the complainant. Initially, FIR was registered under Sections 307 & 506 R/w 34 of the Indian Penal Code, but, upon the death of the victim, offence was converted under Section 302 of the Indian Penal Code

2. The learned counsel for the applicant has pointed out that while the incident occurred on 15/11/2018, FIR was registered on 17/11/2018 and the statement of the alleged eye witness was recorded on 21/11/2018 and the victim eventually died on 29/11/2018. According to learned Advocate for the

applicant, the delay in registration of FIR was a significant aspect of the present case and that even the statement given by the alleged eye witness was not supported by the medical evidence on record. It was further submitted that now the investigation is complete and the chargesheet was filed on 14/02/2019. It was further submitted that all the other three accused had been already enlarged on bail and even if the report lodged by the complainant was to be considered, the incident occurred due to quarrel between the applicant and deceased over a small amount of money and the act attributed to the applicant was under grave and sudden provocation. It was further submitted that only one blow of stick was attributed to the applicant and the documents on record indicated the injury suffered on the head due to said alleged blow was not a serious injury. It was submitted that the death of the victim had occurred mainly because of the complications in the hospital during medical treatment and, therefore, the applicant had made out a case for grant of bail.

3. The learned APP opposed the prayer made in the present application on the ground that there was clear possibility of the applicant influencing the witnesses and the material on record clearly indicates that the applicant had assaulted the victim in violent manner, leading to his death. On this basis, it is submitted that the continued custody of the applicant

was justified in the present case.

4. Heard learned counsel for the rival parties. The material placed on record shows that even according to the complainant i.e. daughter of the victim, the incident occurred on 15/11/2018 at about 6.30 p.m. but the FIR was registered after more than 48 hours on 17/11/2018 at about 11.30 p.m. Therefore, at this stage, it can be said that there was delay in registration of FIR. Record also shows that while the applicant was arrested on 18/11/2018, statement of eye witness was recorded on 21/11/2018 and the victim died on 29/11/2018.

5. The material on record shows that in her statement to the police the alleged eye witness not only stated that the applicant had assaulted the victim by means of stick but also stated that accused No.3 had assaulted the victim by means of stone. The medical evidence does not support the statement of the said witness to the extent that no injury caused by stone was found on the body of the victim. Therefore, to that extent, the statement of the alleged eye witness does not appear to be completely accurate.

6. The learned counsel for the applicant also invited attention of this Court to the statement made by the alleged eye witness under Section 164 of the Code of Criminal Procedure wherein she claims to have

seen the applicant and the victim in a scuffle but that she did not know any other details as she left for her field. Therefore, at this stage, it appears that there was indeed a quarrel or scuffle between the applicant and the victim, but, the details of the role attributed to the applicant are not forthcoming.

7. The material on record also shows that the victim remained hospitalized for a long period of time and eventually died on 29/11/2018. There are no criminal antecedents of the applicant and it appears that this is the first occasion on which offences have been registered against him. The impression gathered from the chargesheet and the documents filed therewith, is that the applicant and the victim seem to have quarreled with each other for the reason of a dispute concerning a small amount of money and that the victim suffered injuries leading to medical complications and eventual death.

8. In this situation, this Court is of the opinion that the applicant is entitled for grant of conditional bail. Accordingly, present application is allowed and the applicant is directed to be released on bail on the following conditions.

1. The applicant shall furnish PR bond of Rs.50,000/- with surety in like amount.
2. The applicant shall not enter village Chikhaldara

during pendency of the trial.

3. The applicant shall remain present before the Trial Court on each and every date.
4. The applicant shall not influence the witnesses in any manner.

9. It is made clear that if any of the conditions are violated by the applicant, the bail granted to the applicant shall stand cancelled.

10. It is further made clear that the observations made in this order are limited to the question of grant of bail to the applicant.

JUDGE