

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

Criminal Application (BA) No.416 of 2019
(Swapnil Suresh Tarpe .vs. State of Maharashtra through P.S. Nandgaon
Peth, Tah.and Dist. Amravati.)

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

Court's or Judge's orders.

Mr. P.V. Navlani, Advocate for Applicant.
Mr. N. R. Rode, APP for Non-applicant/State.

CORAM : Manish Pitale, J.
DATED : June 19, 2019.

The applicant herein is one of the accused in the present case. The other accused person is his own wife. The allegation against the applicant and the co-accused is that on 15.10.2018 they assaulted the father of the applicant by fists and kicks and also by using iron handle of broom causing injury, resulting in the death of the victim. Initially the FIR was registered under Section 326 read with 34 of the IPC, but upon the death of the victim, it was converted to an offence under Section 302 of the IPC. The complainant in the present case is the mother of the applicant and it is claimed by her that the applicant and the co-accused assaulted her husband because he refused to give money to the applicant for purchasing liquor. The allegation against the applicant is that he is addicted to liquor and he assaulted his own father with the assistance of the co-accused at the time of the incident.

2. The learned counsel for the applicant points

out that the co-accused i.e. his wife has been already released on bail by the Sessions Court by order dated 10.01.2019 and since the nature of allegation against both the accused is identical, the applicant is also entitled to grant of bail.

3. It is further pointed out that while the alleged incident is said to have taken place on 15.10.2018, the FIR was registered at the behest of the complainant after four days on 19.10.2018. It is pointed out that the applicant was arrested on 22.10.2018 and that he has remained in custody from the said date. The learned counsel for the applicant has invited attention of this Court to a document pertaining to admission of the injured victim to a hospital wherein in the column of case history it is recorded that the victim suffered injuries on account of assault by an unknown person. It is further pointed out that in another document of the same hospital, the presenting history is recorded as "assault/fall". These documents of the hospital are dated 17.10.2018 and 24.10.2018. On this basis, it is contended that when the initial reporting of the history of the incident by the complainant was in the nature as stated above, it was obvious that the oral report leading to registration of the FIR was an after thought and that the applicant and the co-accused were being falsely implicated. It was submitted that the complainant was upset with the applicant and the co-accused because their marriage was an intercaste marriage, with which the complainant was not happy. On this basis, it was contended that the present application deserved to be

allowed.

4. On the other hand, the learned APP appearing on behalf of the non-applicant/State submitted that the medical examination report pertaining to the applicant immediately upon his arrest on 22.10.2018 records the fact that he had consumed alcohol. It was submitted that the said document and other material on record clearly indicated that the applicant was addicted to liquor and that only for the reason that the victim refused to give money to the applicant to purchase alcohol that the applicant and the co-accused assaulted the victim resulting in his death. It was submitted that considering the aforesaid material on record, a strong *prima facie* case was made out against the applicant for a serious offence and that, therefore, the present application deserved to be rejected.

5. Heard learned counsel for the rival parties and perused the material available on record. It is evident that while the incident in the present case took place on 15.10.2018, the oral report leading to registration of FIR was submitted by the complainant after four days on 19.10.2018. In the interregnum, while stating history of the patient in the hospital, the complainant had stated on 17.10.2018 that the injuries were the result of assault by an unknown person. Apart from this, on 24.10.2018 also, in the history record of the hospital it is found that the complainant stated that the injuries were suffered by the victim due to assault/fall. Thus, from the said documents it appears

that the reporting of the reason for the injuries suffered by the victim on the statement of the complainant, was at variance with what was stated in the oral report leading to registration of FIR on 19.10.2018. It has also come on record that the victim eventually died on 29.10.2018.

6. Although, it is claimed on behalf of the prosecution that the applicant assaulted the victim only for the reason that the victim had refused to give money for purchasing alcohol, the initial reporting of the reason for injuries by the complainant and the fact that the FIR was registered after four days on 19.10.2018, indicates that *prima facie* the allegation made against the applicant does not appear to be completely supported by the material presently on record. The reason for implicating the applicant and the co-accused could well be the fact that the complainant was unhappy with their intercaste marriage. It is also brought on record that the co-accused i.e. wife of the applicant is already released on bail by order dated 10.01.2019 by the Sessions Court wherein one of the conditions for grant of bail is that the said accused no.2 would not contact the complainant in any manner and that she shall not reside in the house of the complainant.

7. In view of the above, this Court is of the opinion that conditional bail can also be granted to the present applicant. Hence the application is allowed and the applicant is directed to be released on bail on the following conditions:-

- (i) The applicant shall execute P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand) and a surety in the like amount.
- (ii) The applicant shall remain present before the trial Court on each and every date of the proceedings.
- (iii) The applicant shall not enter within the jurisdiction of Police Station Nandgaon Peth, district Amravati, during the pendency of the trial.
- (iv) The applicant shall not in any manner, contact the complainant or try to influence her and other witnesses.

8. The application is allowed in the above terms. It is made clear that the observations made in this order are limited to the question of grant of bail to the applicant.

JUDGE

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