

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

Criminal Application (BA) No.581 of 2019
(Satyawar Tulsiram Wankhede .vs. State of Maharashtra through PSO PS
Asegaon (Purna), 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. R.M. Daga, Advocate for Applicant
Mr. J.Y. Ghurde, APP for Non-applicant/State.

CORAM : Manish Pitale, J.
DATED : July 31, 2019.

The applicant has approached this Court seeking bail as he was arrested on 30.01.2018 in connection with first information report (FIR) registered on the same day. Although initially offences under Sections 307 and 504 of the Indian Penal Code were registered against the applicant, upon death of the victim, offence under Section 302 of the IPC was registered against the applicant.

2. The incident in the present case is said to have taken place on 29.01.2018 when the applicant is alleged to have assaulted his own nephew with an axe on his head due to some family dispute. The complainant is the mother of the victim, who claims to have seen the incident with her own eyes. It is alleged that initially there was heated exchange of words happening between the applicant and the victim and thereafter the applicant picked up an axe and assaulted the victim. The victim died due to the said injury on 10.02.2018. The investigation was completed and the

charge-sheet was filed on 09.04.2018.

3. The applicant had earlier approached this Court for grant of bail but the said application was withdrawn on 13.08.2018 and this Court granted liberty to move the Sessions Court afresh if the charge was not framed within six months.

4. Since charge was not framed within the period of six months from the said date, the applicant was constrained to move the Sessions Court and his fresh bail application was rejected on 30.04.2019. The Sessions Court recorded reasons as to why the charge could not be framed within a period of six months and it found that merely because charge was not framed within the aforesaid period of six months, it could not be said that the applicant was entitled to bail, particularly when there was no change in circumstance.

5. The learned APP has informed this Court that charge has been framed on 25.06.2019.

6. The learned counsel for the applicant has submitted that in the present case there is only a single blow inflicted on the head of the victim. It is submitted that even if the description of the incident as given by the complainant is taken into consideration, there does not appear to be any planning carried out by the applicant during the course of the incident. It is further submitted that a perusal of the spot panchanama and the memorandum prepared under Section 27 of the Evidence Act, would show that there is discrepancy in the material on record, inasmuch as it appears that the prosecution has claimed that there was recovery of the weapon of assault i.e. axe twice in the present case. It

is pointed out that there is delay in registration of the FIR because the complainant approached the Police after more than 24 hours of the incident.

7. The learned APP has opposed grant of the present application, pointing out that there are eyewitnesses to the incident including complainant herself. It is pointed out that discrepancy if any, in the material on record, would be for the trial Court to examine during the course of the trial and considering the seriousness of the crime, the application deserves to be rejected.

8. Heard learned counsel for the rival parties and perused the material on record. The material on record shows that the FIR has been registered after about 24 hours of the incident. Even as per the prosecution case, a single blow was given by the applicant on the head of the victim during the course of a quarrel that had roots in a family dispute. The victim died after about 12 days of the date of the incident. The applicant has no criminal antecedents. The recovery of axe shown twice, one at the time of recording spot panchanama and second while recording memorandum under Section 27 of the Evidence Act, is an aspect which the trial Court would take into consideration at the time of the trial but for the present while considering the application for bail, it does become a relevant circumstance.

9. Considering the aforesaid circumstances, this Court is of the opinion that conditional bail can be granted to the applicant by imposing the stringent conditions. Conditions are being imposed to ensure that

the applicant does not influence the witnesses in any manner, as they happen to be relatives and residents of village Mukindpur.

10. In view of the above, the present application is allowed and the applicant is directed to be released on bail in Crime No. 34 of 2018 registered in Police Station Asegaon, district Amravati, on the following conditions:-

- a) The applicant shall furnish P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand) and a surety in the like amount.
- b) The applicant shall report to Police Station Asegaon, district Amravati, twice a month i.e. on second and fourth Sunday of a month between 10 a.m. and 5 p.m.
- c) The applicant shall attend the proceedings before the trial Court on each and every date.
- d) The applicant shall not enter village Mukindpur, tahsil Achalpur, district Amravati, during the pendency of the trial.
- e) The applicant shall not in any manner influence witnesses.

11. Needless to say that violation of any of the conditions noted above, may lead to cancellation of bail granted to the applicant. It is clarified that the observations made in this order are limited to the question of grant of bail to the applicant.

JUDGE