

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

CRIMINAL APPLICATION (BA) NO.592/2019

Mr. Jitu S/o. Sukhdev Madavi .vs. State of Maharashtra

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

Court's or Judge's orders.

Mr. R. R. Vyas, Advocate for applicant.

Mr. M. J. Khan, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : AUGUST 21, 2019

Heard Mr. R. R. Vyas, the learned counsel for the applicant and Mr. M. J. Khan, the learned Additional Public Prosecutor for the State, also perused the entire charge-sheet placed on record alongwith application for bail.

2] The applicant is arrested on 30/01/2019 in connection with Crime No.06/2019 registered with Police Station, Etapalli for the offences punishable under Sections 302, 392, 201, 506 of the Indian Penal Code, 1860. The investigation is over.

3] Deceased is one Sadhu Gumma. It is clear from the charge-sheet that there is no eyewitness in respect of alleged assault by the applicant. The entire case of the prosecution is based on circumstantial evidence, inasmuch according to the prosecution, the deceased was seen in the company of the applicant prior to his death.

4] The first information report is lodged on 30/01/2019 by Madhukar Gumma, the brother of the deceased. The first information report would show that in the month of November, 2018 he went at village Chennur of Andhra Pradesh in search of work. While staying there, on 05/12/2018 his wife Vanita informed him on his cell-phone that his elder brother Sadhu is no more and his body is taken to Government Hospital, Eitapalli for postmortem. On getting such information first informant immediately left Chennur and reached to Hospital at Eitapalli where he noticed that the body of his brother was kept for post-mortem purpose. The first information report further reveals thereafter, there, he asked the wife of Sadhu by name Shaila about the death, on that she disclosed that Sadhu proceeded with applicant Jitu S/o. Sukhdev Madavi alongwith Rs.6000/- for purchasing a goat and they proceeded towards Mouza Persalgondi. As per the first information report Shaila disclosed to Madhukar that at 3:00 O'clock applicant came to Shaila and informed that her husband is under the influence of liquor and is seating beneath tree. Therefore, she went there, however, she could not notice her husband. Therefore, she and her brother Vinod and others went to the house of Jitu, the applicant, on 05/12/2018 and according to the first information report on the said day applicant took them towards a lake where they noticed the body of Sadhu was lying.

5] The learned Additional Public Prosecutor heavily relied on statements of Baburao, Suleman and Vishwajeet. Their statements would show that though they are not eye witnesses, on 04/12/2018 the present applicant took them and sought their help to take out the body of the deceased from lake. Their statements are recorded on 27/02/2019 and apparently there is no explanation for recording their statements belatedly.

6] Though, deceased Sadhu died on 05/12/2018 and Madhukar had been to Government Hospital at the time of postmortem and they were having some suspension against present applicant, for the reasons best known to the widow and the brother of the deceased they chose not to lodge report till 31/01/2019 and there is no plausible explanation for lodging the report belatedly at least at this stage, though it will be open to the prosecution to offer explanation during the course of the trial.

7] Be that as it may, postmortem report would show that the deceased though having contused lacerated wound from anterior traqus base to mandible left side face, cause of death according to the Autopsy Surgeon is as under:

“Probable cause of death may be due to cardio-respiratory failure due to CLW wound over left side face leading to massive hemorrhage.”

8] Charge-sheet shows that the weapon was seized on the statement of present applicant, on which the learned Additional Public Prosecutor has heavily relied upon. The recovery panchanama shows that the weapon knife is seized from the place which is accessible to everybody, therefore, at this stage much importance cannot be attached to the same.

9] The weapon was sent by the Investigating Officer to Medical Officer seeking his opinion as to whether the injury appearing on the person of the dead body can be caused by the said weapon. The opinion of the doctor is also available in the Charge-sheet at page No 71 and the relevant portion can be reproduced as follows:

“The CLW wound is not of animal bit. But the wound is Antemortem and may be caused Accidentally or that may be by assault”.

Thus, even in the opinion of the doctor, the injury appearing on the person can be caused due to accident.

10] The statement of the prosecution witnesses, as referred by the learned Additional Public Prosecutor, would show that the deceased and the applicant had a good session of liquor.

11] In view of the aforesaid nature of the evidence available in the charge-sheet and the investigation, in my view the further custodial presence of the applicant is not necessary especially when there are no criminal antecedents to the present applicant.

In that view of the matter, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Jitu S/o. Sukhdev Madavi be released on bail on he executing P.R. Bond in the sum of Rs.5,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed to attend police station Etapalli, Dist. Gadchiroli, once in a month i.e. on third Sunday of every month in between 02.00 to 05.00 p.m. until the trial is over.

The application is disposed of.

JUDGE