

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

Criminal Application (BA) No.639 of 2019

(Akash Wadafale Vs. State Through P.S. Ramnagar, Dist. Wardha)
with
Criminal Application (BA) No.666 of 2019
(Suryakant Zade Vs. State Through P.S. Ramnagar Dist. Wardha)

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

Court's or Judge's orders

Mr.R.M. Daga, Advocate for applicants.
Mr.A.D. Sonak, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : AUGUST 09, 2019

The applicants in both these applications have approached this Court seeking bail as they stood arrested in connection with FIR dated 04/03/2019, whereby offences under Sections 302, 143, 147, 148, 149 of the Indian Penal Code were registered.

2. A perusal of FIR shows that the two applicants herein are not named in the FIR. In fact, only one accused person is named and it is further stated that 8 to 9 persons, who were employees of Bajaj Agriculture Institution were responsible for the deadly assault on the victim, which resulted in his death.

3. The applicant in Criminal Application (BA) No.639/2019, Akash was arrested on 07/03/2019 and applicant in Criminal Application (BA) No.666/2019, Suryakant was arrested on 05/03/2019. The investigation was completed and chargesheet was filed on 22/05/2019.

3. The learned counsel for the applicants submitted that a perusal of the statement given by the alleged eye witnesses would show that the allegations against applicant Suryakant were of general nature wherein it was stated that he and other accused persons assaulted the victim by way of sticks and in so far as applicant Akash is concerned, the allegation was that he was sitting nearby the place where the incident took place. In fact, it is further pointed out that in the statement of one of the alleged eye witnesses, the name of applicant Suryakant does not find mention at all. It is further pointed out that statements of these alleged eye witnesses recorded under Section 164 of the Code of Criminal Procedure show that such alleged eye witnesses merely stated that they found the victim in an injured condition and there is no mention of involvement of any of the accused, much less the applicant before this Court. On this basis, the learned counsel for the applicant sought relief in the present application.

4. On the other hand, the learned APP opposed grant of bail and invited attention of this Court to a memorandum executed under Section 27 of the Evidence Act, 1872, at the behest of applicant Akash and pointed that an axe was recovered in pursuance of such memorandum. The learned APP also submitted that a heinous crime was committed in the present case and the accused persons including the applicants herein had played an active role in the incident in question.

5. A perusal of the FIR and statements of witnesses demonstrates that in so far as the applicants are concerned, specific role is difficult to discern from the material on record. In fact, in so far as applicant Akash is concerned, there is hardly any material to show that there was an exact role played by him in the incident in question. The emphasis placed on the aforesaid memorandum under Section 27 of the said Act appears to be misplaced, at present, because it is not even the allegation against applicant Akash that he had used axe to assault the victim. One of the statements to which the learned APP invited attention of this Court was that applicant Akash had allegedly exhorted other accused persons for assaulting the victim. But, this is also at variance with the role that has been attributed by the other witnesses to the applicant Akash.

6. As noted above, even as regards applicant Suryakant, other than general allegations about assault by means of stick, there is no specific statement about active role of applicant Suryakant in the said incident. This is also to be appreciated in the backdrop of aforesaid statements made under Section 164 of the Code of Criminal Procedure. The fact that the applicants were not even named in the FIR, in this context, therefore, assumes significance.

7. In view of the aforesaid material on record, it becomes clear that the present application deserves to be granted. Accordingly, the applications are allowed and the applicants are directed to be released on bail in Crime No.144/2019, registered at Police Station Ramnagar Dist. Wardha on the following conditions :

- a) The applicants shall furnish PR bond of Rs.25,000/- each and surety in the like amount.
- b) The applicants shall attend the proceedings before the Trial Court on each and every date.
- c) The applicants shall neither tamper with the evidence nor influence the witnesses.

8. Needless to say, violation of any of the aforesaid conditions by the applicants may lead to cancellation of bail granted to them.

9. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicants.

JUDGE

MP Deshpande