

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

CRIMINAL APPLICATION (BA) NO.730/2019
Sikandar s/o Madhorao Ghorpade

..VS..

State of Mah., thr. PSO PS Kalamna, Nagpur

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

Court's or Judge's Order

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Shri S.R.Shinde, Counsel for the Applicant.
Shri M.J.Khan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.
DATED : SEPTEMBER 25,
2019.

1. This is an application for grant of regular bail.
2. Heard learned counsel Shri S.R.Shinde for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State. Also, perused chargesheet placed on record.
3. The applicant is arrested in connection with Crime No.756/2018 registered with Kalamna Police Station, Nagpur City, Nagpur for offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code.
4. First Information Report is lodged by Chintu Munna Shahu, the brother of deceased Vicky. The First Information Report is dated 10.11.2018.
5. Perusal of the First Information Report reveals that first informant Chintu is not an

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eyewitness and after identifying his brother's body lying in an open space behind a godown, he lodged the report. According to the prosecution, Vicky was assaulted in intervening night of 9.11.2018 and 10.11.2018.

6. Learned Additional Public Prosecutor Shri M.J.Khan for the State, fairly submitted that there is no eyewitness account in the prosecution case.

7. At this stage, the prosecution is relying on statements of one Deepak and Puja, the sister of deceased Vicky to show that these two witnesses noticed that Vicky was taken on motorcycle of the applicant in intervening night of 9.11.2018 and 10.11.2018.

8. Perusal of statement of Deepak recorded under Section 161 of the Code of Criminal Procedure shows that he along with Vicky, the deceased, had a liquor party on a footpath opposite house of Vicky and also had dinner there. His statement shows that at about 10:30 p.m. the present applicant along with one person came there and they took Vicky on motorcycle with them.

9. It is to be noted that investigation agency also recorded statement of this witness Deepak under Section 164 of the Code of Criminal Procedure which is available on record at page Nos.27 to 28(A). Though statements of Deepak recorded under Sections 161 and 164 of the Code of Criminal Procedure are identical to each other, in statement

recorded under Section 164, this witness is conspicuously silent that after liquor party and after dinner when he was there, the applicant took the deceased on motorcycle.

10. Insofar as statement of Puja is concerned, there is a delay in recording her statement.

11. According to the prosecution, there is recovery of weapon i.e. a stone at the behest of the applicant. Recovery panchnama shows that a stone is recovered from an open space. Therefore, at this stage, much importance cannot be attached.

12. Learned Additional Public Prosecutor Shri M.J.Khan for the State, submitted that blood stained clothes of the accused are also seized. He is arrested on 11.11.2018. Whereas, property is seized on 14.11.2018.

13. In view of the fact that there is no eyewitness account and investigation is over, further custodial presence of the applicant is not warranted. Hence, I pass following order:

ORDER

(a) The criminal application is allowed.

(b) Applicant-Sikandar s/o Madhorao Ghorpade, in connection with Crime No.756/2018 registered with Kalamna Police Station, Nagpur City, Nagpur for offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code, be released on bail on his executing a P.R.Bond in the sum of

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Rs.10,000/- with one solvent surety of the like amount.

(c) The applicant shall attend the police station twice a week i.e. on every Sunday and Tuesday and shall be in the police station from 3:00 p.m. to 5:00 p.m., till culmination of the Trial.

(d) Observations made in this order are purely *prima facie* in nature for decision of the present bail application and learned Judge of the court below before whom the Trial will be conducted shall not get influenced by any observations made in this order.

(e) With this, the criminal application stands disposed of accordingly.

JUDGE

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