

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

CRIMINAL APPLICATION (BA) NO.872/2019

Gulab Ramrao Dhakate .vs. State of Maharashtra, through PSO P.S. Arni,
Dist. Yavatmal.

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

Court's or Judge's orders.

Mr. P. W. Mirza, Advocate for applicant.
Mr. S. S. Doifode, A.P.P. for non applicant-State

CORAM : V. M. DESHPANDE, J.

DATED : OCTOBER 7, 2019

Heard Mr. Mirza, learned counsel for applicant
and Mr. Doifode, learned A.P.P. for non applicant-State.

Applicant is arrested on 14.12.2018 in connection
with Crime No.931/2018, registered with Police Station,
Arni, Dist. Yavatmal for an offence punishable under
Sections 302, 307 and 34 of the Indian Penal Code.

It is the submission of learned counsel for the
applicant that though name of present applicant is appearing
in the First Information Report and his name was taken by
the eye witnesses, perusal of the statement of the eye
witnesses would clearly reveal that there is a difference of
statement of fact between them and the first informant. Not
only that, he submits that statements of Sourabh and Ritesh
would show that though the applicant was present on the
spot of the incident at the time of the incident, he has not
participated in the actual assault made on the deceased.

It is the submission of the learned A.P.P. for the State that from present applicant, a rod and also his blood stained clothes are recovered. He further submits that presence of the applicant is there in view of the statement of the first informant as well as eye witnesses. He therefore submits that the present application be rejected.

Perusal of charge-sheet would reveal that deceased Nilesh was assaulted by means of knife by co-accused Milind Dethe so also he was assaulted by two persons by means of iron rod on his head.

The post mortem report shows that there are 27 injuries on the body of Nilesh as found by the autopsy surgeon while conducting the post mortem over his dead body. Out of 27 injuries, 20 are the stab incised wounds and 7 are linear abrasions on the body of the deceased. No fracture was found to the scalp of the deceased. The cause of death, as opined in the post mortem report is shock and hemorrhage due to injuries on vital organs following multiple stab injures. Neither first informant nor any of the eye witnesses do attribute any role to present applicant that he used either knife or any other weapon resulting into stab and/or incised wounds.

In that view of the matter, obviously the deceased did not die due to the alleged assault by rod, which was held by the applicant as alleged in the prosecution case.

There is a variance in between statements of Om, the first informant and the injured, who was also assaulted by co-accused Milind and statements of Sourabh and Ritesh. Though these two eye witnesses attribute that the applicant was present on the spot, they did not attribute that the applicant actually assaulted on the deceased.

In that view of the matter and in view of the fact that charge-sheet is already filed, looking to the role of the present applicant that he was only present there and was trying to obstruct others to rescue the deceased, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Gulab Ramrao Dhakate be released on bail in connection with Crime No.931/2018, registered with Police Station, Arni, Dist. Yavatmal for an offence punishable under Sections 302, 307 and 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed not to enter territorial jurisdiction of Police Station, Arni until culmination of trial.
- (iv) The applicant shall attend Police Station, Darwha, once in 15 days till culmination of the trial.
- (v) The applicant shall attend each and every date before the trial Court.

(vi) The observations made in this order are only for deciding this application and learned Judge before whom trial will be conducted should not get himself influenced by the same.

The application is disposed of.

JUDGE

kahale