

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

CRIMINAL APPLICATION (BA) NO. 923 OF 2019

Nilesh s/o Vijay Mathale .Vs. State of Maharashtra,through P.S.O, P.S.
Kalamna, Nagpur.

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. V.A. Thakare, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.

DATED : OCTOBER 22, 2019

Heard Mr.Vyas, learned counsel for the applicant.
Mr. Thakare, learned Additional Public Prosecutor for the
State. Also perused the reply filed on behalf of the State.

The applicant is arrested on 15.03.2019 by the
Police Station Officer, Kalamna, Nagpur in connection with
Crime No.166/2019 registered with Police Station, Kalamna
for an offence punishable under Sections 302, 143, 147, 148
and 149 of the Indian Penal Code and Sections 4, 25 of the
Arms Act and Section 135 of the Maharashtra Police Act.

The investigation is over and charge-sheet is
already filed.

The deceased in this crime is Shaikh Irfan Shaikh
Abdul Razak. The incident in question has occurred five
minutes earlier to the mid night of 14.03.2019 near
Hanuman Temple, Gulshan Nagar, Nagpur.

The first information report is lodged by Ganesh
Dabre, police constable, who was part and parcel of the

police unit for discharging their duties in their beat Gulshangar falls. According to the report when Ganesh Dabare along with police constable Vasanta were doing patrolling duty, that time they received intimation from walkie-talkie from the police control room that near Tarale Flour Mill a dispute is going on therefore they reached there. However, they noticed that a dispute between husband and wife therefore after giving a word of advice they proceeded for further patrolling. At that time again they received intimation from the control room. Upon that they reached near Hanuman temple at 23:50 hours. They noticed the mob and that mob was assaulting on a person by means of brick and sword. Taking cognizance of presence of the police party the mob spread. The police party noticed one person failing in injured condition. He was identified as Shaikh Irfan Shaikh Abdul Razak. He was taken to the hospital however he could not be saved.

During the course of investigation supplementary statement of Ganesh Dabare police constable who lodged the report is also recorded. His supplementary statement would reveal that at the time of incident, electric light was in illuminating condition and therefore he could notice the presence of the accused persons including the present applicant. However, according to the statements, the iron sword was held by co-accused person Abhinay Gosai and co-accused Viju Barapatre was assaulting with the help of bricks. Though the role is attributed against the present applicant the role attributed to him is that along with others

he was assaulting by means of fist blows. Similar is the statement of Vasanta Thombare another police constable which was part and parcel of police squad. Ramesh Parote and Ramesh Parave are the residents of Gulshannagar. They are also eye witnesses and their statements would show that the deceased was assaulted by Abhinay Gosai and Viju Barapatre by respective weapons in their hand and the role attributed to present applicant is that he assaulted by fist blows.

Charge-sheet contains the personal search panchanama of applicant in presence of the panch witnesses. The said panchanama is at running page 107 of the compilation. It shows that when the applicant who was arrested immediately, his cloths were seized in presence of panchas. The panchanama would show that at the time of seizure of cloths there were no blood stains on the cloths of the present applicant.

It is not the case of the prosecution case as it could be seen from the charge-sheet that any weapon is seized at the behest of the present applicant. In addition to the aforesaid, it is reported to this Court that the past record of the applicant is absolutely clean.

In view of the aforesaid nature of the evidence collected during of the course of the investigation and when the final report is already placed before Court below, in my view, applicant can be released on bail. Consequently, I pass following order :

ORDER

- (i) The application is allowed.
- (ii) Applicant – Nilesh s/o Vijay Mathale be released on bail in connection with Crime No.166/2019 registered with Police Station, Kalamna, Nagpur for an offence punishable under Sections 302, 143, 147, 148 and 149 of the Indian Penal Code and Sections 4, 25 of the Arms Act and Section 135 of the Maharashtra Police Act, be released on bail on he executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (iii) Applicant is directed to attend Police Station, Police Station, Kalamna, Nagpur once a month i.e. on third Sunday of every month and shall be with the investigating officer from 11:00 a.m. to 05:00 p.m. until culmination of the trial.
- (iv) The applicant is directed to attend all Court dates dates scrupulously.

The application is disposed of.

JUDGE

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