

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

CRIMINAL APPLICATION (BA) NO. 937 OF 2019

Rushikesh Vinayak Ukey

-Vs.-

State of Maharashtra, thru. P.S.O., P.S. Imamwada, Nagpur

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

Court's or Judge's Orders.

Mr. U.P. Dable, counsel for the applicant.

Mr P. S. Tembhare, A.P.P. for the non-applicant

CORAM : V. M. DESHPANDE, J.

DATED : NOVEMBER 21, 2019

Heard Mr U. P. Dable, learned counsel for the applicant and Mr. P. S. Tembhare, learned A.P.P. for the non-applicant-State. Also perused the reply and the copy of the charge-sheet placed on record.

2] The oral report culminated into registration of Crime No. 2/2019 registered with Police Station Imamwada for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act, 1959 and Sections 135 and 142 of the Bombay Police Act, 1951, was lodged by Akshay Lekhram Waghmare on 01/01/2019 in respect of incident that occurred on 31/12/2018 at 11:30 in the night. In the said incident Akash @ Deepak, the brother of the first informant lost his life.

3] As per the report, on 31/12/2018, first informant and deceased were sleeping in their house. At that time somebody gave kick blows on door of their house. Therefore, deceased opened the door and at that time, he noticed presence of four accused persons including the present applicant. The report shows that co-accused Shubham was holding weapon and he threatened the deceased by uttering words that "he will kill him". Thereafter, said Shubham and his other associates including the present applicant dragged the deceased outside the house. As per the first information report, co-accused Shubham gave dagger blows resulting into bleeding injuries. The assailants ran away from the spot. The injured was taken to the hospital, however, he was declared brought dead.

4] During the course of the investigation, the Investigating Officer has recorded the statements of Dasharath Sandil, Martin Anthony, Raju Sandil, Deepak Sandil and Kartik Vaidya. These prosecution witnesses were present at the time of assault on deceased Akash. With the assistance of the learned counsel for the applicant and the learned A.P.P., I have gone through the statements of these eye witnesses. Their statements would reveal that deceased was assaulted by Shubham @ Circuit Tayade by means of dagger in his hand. Role attributed to the present applicant was that he assaulted by means of fist blows. Post-mortem report shows that there were three anti-mortem injuries. Two were abrasion in nature and one was stab wound which

can clearly be attributed to Shubham. The weapon is recovered at the behest of Shubham, who used the same at the time of offence from the place shown by him where it was concealed. The clothes of the present applicant are seized. However, perusal of the seizure panchanama would show that the clothes which according to the prosecution were on the person of the applicant were not having any blood stains. The learned A.P.P submitted that, applicant is having past criminal record, apart from the present crime. As per the reply, three offences are registered against the applicant. Two are registered in the year 2017-2018. Crime No. 1/2019 is also registered with Police Station, Imamwada for the offence punishable under Sections 307, 323, 324, 504, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/25 of the Arms Act, 1959. From the Charge-sheet, it is clear that prior to the incident in question an incident had occurred with Suraj Barmate on the basis of which Crime No. 1/2019 is registered. Statement of Suraj Barmate is also the part and parcel of present charge-sheet. It also shows that he was assaulted by Shubham and not by the present applicant.

5] Looking to the fact that, the allegation against the applicant is that he participated in crime by using force by his fist and not by weapon, in my view looking to this particular accusation which is appearing in the charge-sheet merely because the applicant is having criminal record need not be denied the bail specially when there is no possibility

that the trial will be commenced in near future.
Consequently, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant-Rushikesh S/o. Vinayak Ukey be released on bail on he executing P.R. bond of Rs.15,000/- with one solvent surety in the like amount in connection with Crime No.2/2019, registered with Police Station Imamwada, Nagpur for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act, 1959 and Sections 135 and 142 of the Bombay Police Act, 1951.
- (iii) The applicant is directed to attend Police Station Imamwada, Nagpur twice a week i.e. on Wednesday and Friday and he shall be in the Police Station from 11.00 a.m. to 05.00 p.m., until the trial is over.

With this, application is allowed and disposed of.

JUDGE