

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

CRIMINAL APPLICATION (BA) NO. 950 OF 2019

Nitin s/o Maroti Kadam .Vs. State of Maharashtra, through PSO, P.S. Arni,
Tq. Arni, Dist. Yavatmal.

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

Mr. Tejas Deshpande, Advocate for applicant.
Mr. M.J. Khan, A. P .P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 13, 2019

Heard Mr. Deshpande, learned counsel for the
applicant and Mr. Khan, learned Additional Public
Prosecutor for the non applicant-State.

The applicant is arrested on 03.06.2019 in
connection with Crime No.320/2019 registered with Police
Station, Arni, Tq. Arni, Dist. Yavatmal for an offence
punishable under Sections 302 read with Section 34 of the
Indian Penal Code, 1860.

The investigation is over and charge-sheet is
already filed. Deceased is one Aqueel Shabbir Khan. The
first information report is lodged by his brother Shakeel
Khan on 03.06.2019 with Police Station, Arni. From the first
information report, it is clear that the first informant is not
an eye witness and he lodged the report on the basis of
information received by him from a friend of deceased one
Rahul Kolaskar, who is an eye witness of the incident. The
deceased was working as a Manager of Mahalaxmi Lawn at
Arni.

In this prosecution case there are 5 eye witnesses they are; Rahul Kolaskar, Avinash Wathore, Ashwin Rekewar, Akash Girolkar and one Shaikh Ashpak Khalil.

The incident in question has occurred in the intervening night of 02.06.2019 and 03.06.2019 in front of the house of one Sonal Ramteke who was also arrested as accused and already released on bail by the Court below.

From the statement of eye witnesses it is clear that on 02.06.2019 there was birthday of eye witness Rahul Kolaskar and therefore, he along with his friends decided to celebrate the same in a liquor bar known as *Mai Restaurant*. The deceased came there along with birthday cake and after cutting the birthday cake party started. The party was started at 10:30 in the night and it continued beyond mid night. At 01:00 a.m., one Vinod Lohat and Sanjay Thakre also came in the said restaurant for dinner and they were also invited by the group consisting of the deceased and his friends, the eye witnesses. Accordingly they joined the birthday party.

The statements of the eye witnesses would show that when the dinner started, deceased Aqueel Khan received a phone call and therefore, he went outside of restaurant in response to the said phone call. Though after 15 minutes he failed to return, therefore, Rahul gave a phone call to him. The statements of the eye witnesses would reveal that phone call of Rahul was replied by deceased Aqueel Khan and it was informed that he has been assaulted in front of house of Sonal Ramteke and all the

witnesses rushed towards said place. When they reached to the spot, in the light of electricity lamp they noticed presence of accused persons including the present applicant. The statements of eye witnesses would show that quarrel was going on in between Manda Ramteke, present applicant and deceased Aqueel Khan. All the witnesses tried to separate the quarrel. At that time, as per the eye witnesses, the present applicant asked co-accused Manda Ramteke as to for what purpose knife is kept. Thereafter said co-accused Manda went inside and brought pincer (*sandshi*) and assaulted on the back of the deceased. The eye witnesses' statement would further show that thereafter co-accused Manda called co-accused Satish alias Jambya. Thereafter Satish alias Jambya came running along with weapon in his hand and gave knife blow on him. Due to that deceased Aqueel fell down. Thereafter, as per eye witness account, present applicant and others also assaulted by means of fist and kick blows.

The post mortem report shows that the reason for death is "Hemorrhagic shock following stab to heart".

All the eye witnesses, whose statements are recorded immediately, consistently state that the assault by means of knife was made by co-accused Satish alias Jambya and not by the present applicant. The accusation against the present applicant, as it could be seen from their statements that he asked Manda as to for what purpose knife is kept. However, their statements would show that Manda did not bring the knife, in stead she brought the pincer (*Sandashi*) and assaulted on the back of the deceased. Thereafter, she

shouted and called Satish alias Jambya and thereafter he arrived on the scene along with weapon and made the assault. During the investigation nothing is seized on the memorandum statement of the present applicant.

Looking to the aforesaid nature of the evidence, in my view, when the investigation is over, the applicant need not continue his jail presence. Resultantly, I pass following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant- Nitin s/o Maroti Kadam be released on bail in connection with Crime No.320/2019 registered with Police Station, Arni, Tq. Arni, Dist. Yavatmal for an offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860, on he executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed to attend Police Station, Arni, Tq. Arni, Dist. Yavatmal once in a fortnight till culmination of trial.
- (iv) With this, the criminal application is allowed and disposed of.

JUDGE

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