

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

CRIMINAL APPLICATION (BA) NO. 1017 OF 2019

Ajay alias Raja Sakaru Rathod .Vs. State of Maharashtra through PSO, P.S.
Chandur Railway, Tq. Chandur Railway, Dist. Amravati.

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

Court's or Judge's orders.

Ms. S.S. Jadhav, Advocate for applicant.
Mr. N.R. Rode, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 06, 2019

1. Heard Ms. Jadhav, learned counsel for the applicant and Mr. Rode, learned Additional Public Prosecutor for the non applicant-State.

2. Applicant is arrested connection with Crime No.133/2018 registered with Police Station, Chandur Railway, Tq. Chandur Railway, Dist. Amravati for an offence punishable under Sections 302, 307, 312, 201 read with Section 34 of the Indian Penal Code.

3. As per submissions of learned counsel for applicant, the investigation is over and charge-sheet is already filed therefore further custodial presence of applicant is not required. She also submits that there are material improvements in the first statement given by injured and his supplementary statement. According to her, therefore it creates doubt about veracity of his statement. She also submits no weapon is recovered at the behest of applicant. She, therefore, submitted that the application be allowed.

4. Learned Additional Public Prosecutor vehemently opposed the application by not only filing the reply but also pointing out the material against present applicant available in charge-sheet. He, therefore, submitted that the application be rejected.

5. The incident has occurred in jungle area of Manjarkheda and Savnga on 25.07.2018. On the date and time of incident, Satish Madavi, Police Constable and Shamrao Jadhav, Assistant Sub-Inspector were discharging their duties for conducting raid on the illicit liquor den. That time the accused persons including the present applicant not only obstructed these public servant in discharging their duties but they were mercilessly assaulted, resulting into death of Head Constable Satish Madavi and severe injury received to Assistant Sub-Inspector Shamrao Jadhav.

6. Information of the incident was transmitted to Police Station, Chandur Railway by Police Patil-Prafulla Gulhane of Manjarkhed. He informed police station about the assault and therefore demanded supplementary police force. Accordingly, first informant Mahadeo Pokale along with others reached to the spot. After reaching to the spot the first informant Mahadeo Pokale noticed that there were severe injures to both the police personnel. Therefore, ambulance was called and when police party was giving helping hand to the injured persons, he asked them as to what happened. That time it was revealed to the first informant that applicant Ajay alias Raja Rahod and co-accused Umesh Rahod assaulted on them.

7. Statement of injured Shamrao Jadhav was immediately recorded when he was hospitalized. His statement recorded in the hospital is dated 25.07.2018 thus is on the date of the incident itself. The said statement is part and parcel of the charge-sheet. A perusal of the said statement would show that before recording his statement fitness certificate was obtained from the Doctor and Doctor was throughout present during recording of his statement. In the statement, injured Shamrao Jadhav specifically attributed the overt act on the part of the present applicant. It is to be mentioned here that the applicant is also known as Raja. Injured Shamrao Jadhav stated that co-accused Umesh Rathod and Ajay alias Raja i.e. present applicant assaulted on him and his companion Police Constable mercilessly. The supplementary statement of Shamrao Jadhav, ASI is also recorded. The reason as to why that statement is recorded is also mentioned in the statement itself. Shamrao Jadhav has specifically stated in his supplementary statement that when his first statement was recorded that time he was injured and was taking treatment therefore he missed narrating certain facts and those facts he narrated in the supplementary statement. Even in the supplementary statement, injured Shamrao Jadhav does not change his version in respect of the assault made by the applicant on him and his companion police constable. He only gave the details. Not only that, he stated in the statement that he got some opportunity to make phone calls, therefore he made phone call to one Dinesh wherein it was revealed to said Dinesh that the persons involved into liquor business mercilessly assaulted on them.

8. Postmortem report shows that deceased Satish Madavi received numerous injuries including fracture to his skull. The cause of death was injury to the head because of assault.

9. The injury certificate of injured Shamrao Jadhav also shows that he also received multiple injuries including fracture.

10. True it is that no weapon is recovered at the behest of the present applicant however during his police custody remand, in his memorandum statement he agreed to show the place where he concealed the cellphone of deceased and the clothes on his persons when he assaulted on the deceased and the injured. Accordingly, in presence of panchas he led the police party to the spot which was within the knowledge of the applicant only. Recovery panchanama shows that apart from cellphone, the clothes of the applicant having blood stains were recovered.

11. Charge-sheet also contains statements of the ladies who were working in the nearby field. Their statements would show that two persons were assaulted by two persons. Their statements would also show that the quipped, “*तुम्ही इतके कायले जोरान मारता, मरुन जाईन ना तो*”. Thus this assault is also seen by the independent persons.

12. In totality of the circumstance, it is clear that when the deceased and injured were discharging their official duties as police constable, they were not only obstructed by applicant and co-accused but also during that obstruction they were mercilessly

beaten in which one police constable died and the injured ASI has specifically attributed role of assault to the present applicant, which is verified by recovery of blood stained clothes.

13. Consequently, I seen no merit in this application. The application is therefore rejected.

JUDGE

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