

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

CRIMINAL APPLICATION (BA) NO.1072/2019

Praful s/o Bhimrao Gajbhiye

..VS..

The State of Mah., thr. PSO PS Gittikhadan, Nagpur

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

Court's or Judge's Order

.....
Shri C.R.Thakur, Counsel for the Applicant.
Shri J.Y.Ghurde, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : NOVEMBER 28, 2019.

1. Heard learned counsel Shri C.R.Thakur for the applicant and learned Additional Public Prosecutor Shri J.Y.Ghurde for the State. Also, perused the charge-sheet.
2. The applicant is arrested on 24.5.2019 in connection with Crime No.367/2019 registered with Police Station Gittikhadan, Nagpur for offence punishable under Section 302 read with Section 34 of the Indian Penal Code.
3. The investigation is over and the charge-sheet is already filed.
4. The charge-sheet does not show that the incident in which Rahul Salame was killed, was witnessed by any prosecution witness. The first information report is lodged by Pooja Salame, widow of Rahul. It is dated 24.5.2019. She is not an eye-witness. Her report would show that on the day of the incident when her father-in-law

came to their house, in order to give treat, she prepared chicken and she and her father-in-law were waiting for the deceased, who had left the house on some pretext. At about 11.00 O'clock in the night, one Akash Dhurve informed the first informant that her husband Rahul is lying in injured condition on road. Therefore, she, her mother Shewanta and sister Seema went on the spot of the incident to notice that Rahul was in injured condition and was unconscious. The post mortem report shows that there was depressed fracture over the right temporal region and also another fracture on base of skull. The cause of death as revealed in the post mortem report is "head injury".

5. Learned counsel Shri C.R.Thakur for the applicant, invited my attention to the statements of two prosecution witnesses namely Deep Gaikwad and Vrushabh Sahare. Their statements were recorded on 25.5.2019. Their statements show that on 23.5.2019, they noticed presence of present applicant in the company of co-accused Rohit Parkam and Lucky @ Ayush Manohare and Ashish. Statement of Deep would show that co-accused Ashish asked him that he should go to his house. Statements of Deep and Vrushabh would show that on the spot of incident, accused persons were having dialogue with one person. As per their statement, on the next day they got knowledge that at the place where they noticed the applicant and co-accused having talk with somebody, is a place whereat Rahul is done to death.

6. Statement of Deep would show that deceased was known to him. Not only that, he was knowing him even by his nick name "*Sata*". However, his statement is conspicuously silent that he noticed the presence of deceased. In that view of the matter, at least at this stage, in my opinion, statements of Deep and Vrushabh are not helpful to the prosecution case.

7. Another circumstance that is pressed into service is the statement of the applicant under Section 27 of the Evidence Act. The said statement would show that it was a joint statement of the applicant and co-accused Ashish. In view of the said statement, recovery of stone which according to the prosecution is the weapon used, is made at the behest of the applicant, however it is from open space.

8. The recovery of clothes is made at the behest of the present applicant.

9. In my view, since the investigation is over and the further custodial presence of the applicant is not essential, also there are no criminal antecedents against the present applicant, the application of the applicant can be considered favourably. Resultantly, I pass the following order:-

ORDER

(a) The criminal application is allowed.

(b) Applicant–Praful s/o Bhimrao Gajbhiye, who is arrested in connection with Crime No.367/2019 registered with

Police Station Gittikhadan, Nagpur for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on he executing PR bond in the sum of Rs.10,000/- with one solvent surety in the like amount.

(c) The applicant is directed to attend Police Station, Gittikhadan, Nagpur twice a month i.e. on 3rd and 4th Wednesday of the month and shall be in the police station between 3.00 pm to 5.00 pm, till culmination of the trial.

(d) The applicant is directed to attend all the Court dates without fail.

(e) The observations made in this order against the present applicant are purely *prima facie* in nature and only for deciding this application for bail. It shall be always open for the prosecution to adduce necessary evidence to prove culpability of the present applicant during the course of trial.

The criminal application is allowed and disposed of.

JUDGE

!! BRW !!

...../-