

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

CRIMINAL APPLICATION (BA) NO.1074/2019

Ravi @ Bilua s/o Prakash Gautel

..vs..

State of Mah., thr.PS Panchpaoli, Nagpur

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

Court's or Judge's Order

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Shri R.S.Nayak, Counsel for the Applicant.
Shri P.S.Tembhare, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.
DATED : NOVEMBER 28, 2019.

1. Heard learned counsel Shri R.S.Nayak for the applicant and learned Additional Public Prosecutor Shri P.S.Tembhare for the State. Also, perused chargesheet.
2. The applicant is arrested in connection with Crime No.552/2019 registered with Panchpaoli Police Station, Nagpur. Initially, though offence was registered against the applicant i.e. on the day of registration of crime on 17.6.2019 for offence punishable under Section 307 read with Section 34 of the Indian Penal Code, after death of injured Ayush on 20.6.2019, Section 302 of the Indian Penal Code was also added.
3. The First Information Report is lodged by Nikhil Raviprakash Shambharkar, the brother of deceased Ayush. He is not eyewitness. When he received a phone call from one of his relatives on 17.6.2019 at about 2:51 a.m., he was

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discharging his duties at Hotel Oyo, Nagpur. It was informed to him by his relative that his younger brother Ayush is assaulted and is hospitalized and, therefore, he went to hospital where Ayush was hospitalized. It was also informed to him that position of Ayush is critical. He lodged a report that he received an information from Smt.Kala that, while having drinking session along with Mohd.Ashfaq, his brother Ayush was assaulted by one Yash, Rohit, and Kalu.

4. Chargesheet contains statement of various witnesses. However, statements of witnesses Smt.Kala and Mohd.Ashfaq are to be considered at the time of deciding of the present application.

5. Statement of Moh.Ashfaq, shows that he and Ayush, the deceased, used to drink liquor on Railway Line going to Calcutta after their work. At the same place, the present applicant, co-accused Yash, and Kalu also used to assemble for drinking session. As per his statement, prior to one month of incident the applicant had stare at Mohd.Ashfaq. Mohd.Ashfaq's statement shows that on day of incident when they were having their drinking session, the present applicant lifted a rafter and chased him. He, therefore, ran away. His statement shows that that time, Ayush, who was accompanying him, was assaulted by the applicant and other co-accused persons.

6. Statement of Smt.Kala, who is an independent witness, shows that on the date of incident co-accused Rohit came to her house and demanded water for their drinking

session which was provided by her. At night, she heard commotion and, therefore, she stepped out of her house and saw that Yash, Kalu, and Rohit and their friends were assaulting Ayush, the deceased. Her statement shows that Yash was holding a rafter and he assaulted on the head of Ayush.

7. Name of the applicant is not there in the statement of Smt.Kala, however his presence is clearly established from the statement of Mohd.Ashfaq.

8. Postmortem report of deceased Ayush shows that there are number of injuries, however cause of death is head injury. As per the statement of Smt.Kala, she specifically attributed overt act of assaulting on the head of Ayush by Yash.

9. It is informed to this Court during the course of hearing that co-accused Ajay @ Kalu and Rohit are already released on bail by Trial Court. Yash juvenile is in conflict with law. Since overt act resulting into death of Ayush can be attributed to Yash, merely because there is recovery from the applicant, he need not be detained in jail. Consequently, I pass following order:-

ORDER

(a) The criminal application is allowed.

(b) Applicant-Ravi @ Bilua s/o Prakash Gautel, in connection with Crime No.552/2019 registered with Panchpaoli Police Station, Nagpur for offence punishable

under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on his executing a P.R.Bond in the sum of Rs.10,000/- with one solvent surety of the like amount.

(c) The applicant is directed to attend the police station twice a month i.e. on 1st Saturday and 4th Tuesday of each month, till culmination of Trial.

With this, the criminal application stands disposed of accordingly.

JUDGE

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