

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

CRIMINAL APPLICATION (BA) NO.3/2020

Bablu alias Abdul Sabir Abdul Bashir .vs. State of Maharashtra, through
PSO P.S. Kotwali, Tq. Dist. Amravati.

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

Court's or Judge's orders.

Mr. S. V. Sirpurkar, Advocate for applicant.
Mr. M. J. Khan, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 10, 2020

Heard Mr. Sirpurkar, learned counsel for applicant and Mr. Khan, learned A.P.P. for non applicant-State. Also perused entire charge-sheet which is placed on record.

Applicant is accused no.1 in Crime No. 246/2019, registered with Police Station, Kotwali, Amravati for an offence punishable under Sections 302, 307, 324, 504, 506 read with Section 34 of the Indian Penal Code (IPC). The applicant was arrested on 27.06.2019 and since then he is in jail. The offence was lodged by Rizwan Daud Mamdani on 14.06.2019 in respect of an occurrence on the very same day. The report of Rizwan would reveal that a dispute was there regarding flowing of waste water from drainage dug by the first informant. As per the report, on 14.06.2019, a dispute arose regarding flowing of waste water in drainage dug by the family of the first informant by accused persons which was objected by deceased and therefore the quarrel

erupted and in that quarrel according to the FIR, Rajik and Sadik caught hold of the hands of Daud and thereafter the present applicant assaulted by means of spade on his head.

It is an admitted fact on record that a counter report is filed by Abdul Sadik, co-accused against whom allegations are made that he caught hold of the deceased, that he was assaulted by first informant Rizwan by means of scissors on his buttock. On the basis of statement of Abdul Sadik an offence is registered against Rizwan for an offence punishable under Section 324 read with Section 34 of the IPC. The injury certificate of Abdul Sadik which is on record and it is not disputed by the prosecution. It shows that there may be lacerated wound of 2 cm X $\frac{1}{2}$ cm X $\frac{1}{4}$ cm on buttock of Abdul Sadik and one linear abrasion on his right cheek. This statement of Abdul Sadik that he was assaulted on the day of incident by Rizwan by means of scissors is corroborated by medical evidence. According to Abdul Sadik's statement, dispute arose on flowing of waste water and when he was assaulted by Rizwan, his brother Bablu and Rajik also came and at that time, in that quarrel, deceased Daud fell on floor resulting into injury on his head.

According to the prosecution case, the applicant used spade for assaulting the deceased on his head which resulted into bleeding injury. The spade is recovered at the behest of the applicant. The recovery panchanama would show that no blood stains were found on the said spade at the time of his seizure and sealing.

In that view of the matter coupled with the fact that there is nothing to show that the applicant has given repeated blows of spade, there might be a ring of truth in the version of Abdul Sadik, which is supported by medical evidence though it will always be open for the prosecution to prove otherwise during trial, further custodial presence of the applicant is not necessary when there are no criminal antecedents at the discredit of the present applicant. That leads me to pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Bablu alias Abdul Sabir Abdul Bashir be released on bail in connection with Crime No.246/2019 registered with Police Station, Kotwali, Amravati for an offence punishable under Sections 302, 307, 324, 504, 506 (B) read with Section 34 of the Indian Penal Code on he executing P.R. Bond in the sum of Rs.25,000/- with two solvent sureties in the like amount.
- (iii) Applicant is directed to attend Police Station, Kotwali, Amravati once in a week i.e. on every Monday from 03.00 p.m. to 05.00 p.m. till culmination of the trial.

The application is disposed of.

JUDGE