

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

LDVC CRIMINAL APPLICATION (BA) NO.657 OF 2020

(Hariprasad s/o. Madhavprasad Kesarwani and another .vs. State)

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

Court's or Judge's

CORAM : M. G. GIRATKAR, J.

DATE : 30.7.2020.

Heard Mr.A.A.Naik, learned Counsel for the applicant and Mr.N.B.Jawade, learned Additional Public Prosecutor for non-applicant/State. The hearing was conducted through Video Conferencing and the learned Counsel for the respective parties agreed that the audio and visual quality was proper.

Mr.A.A.Naik, learned Counsel for the applicant has pointed out the photographs filed on record. The learned Counsel has submitted that the deceased himself has committed suicide. Many persons witnessed the incident, but statement of not a single witness was recorded by the Investigating Agency. The applicant is falsely involved in the present crime only on the basis of false dying declaration. Learned Counsel for the applicant further submitted that the compilation of photographs filed on record from page no.50 to 61 shows that the deceased himself took out petrol from his scooter, he entered the shop of accused persons and committed suicide. The

learned Counsel submitted that the shop of deceased was demolished in road widening and therefore, he was demanding space inside the shop of the applicants. Therefore, there was dispute between the deceased and the applicants and hence, the applicants are falsely involved in the crime. The learned Counsel, therefore, prayed to release the applicants on bail.

Mr.N.B.Jawade, learned Additional Public Prosecutor for non-applicant/State has submitted that the dying declaration of deceased shows that applicant no.1 Hariprasad Kesarwani poured petrol on the deceased and applicant no.2 Dipak Kesarwani ignited match stick and set him on fire. This dying declaration is the material evidence. The learned Additional Public Prosecutor has submitted that law on dying declaration is very specific. The accused can be convicted only on the basis of dying declaration of victim.

There is no dispute about the legal proposition in respect of dying declaration. The accused can be convicted only on the basis of dying declaration provided that it should inspire confidence of the Court. It should approve version of the deceased. Mental condition of deceased etc. is to be seen by the trial Court while deciding the matter only on the basis of dying declaration. The dying declaration placed on record does not show any Certificate at the foot showing that the patient was fit and mentally

conscious to give dying declaration.

The photographs filed on record by the applicants show that the deceased himself took out petrol from his scooter and entered in the shop of the applicants. Many persons were witnessing the incident outside the shop of the applicants, but none of the witnesses is examined by the prosecution.

At this stage, except the dying declaration, there is no other evidence against the applicants. Hence, the following order.

The application is allowed.

Applicant no.1 Hariprasad s/o. Madhavprasad Kesarwani and applicant no.2 Dipak s/o. Lakhanlal Kesarwani be released on bail on execution of P.R. bond of **Rs.25,000/-** each with one solvent surety each in the like amount.

They shall not tamper with the evidence of prosecution witnesses.

They shall attend the trial Court on each and every date.

They shall not leave the jurisdiction of trial Court without prior permission.

It is made clear that the observations recorded by this Court while deciding this application shall not come in the way of the trial Court while deciding the matter during the trial. The trial Court has to record it's findings independently on the basis of evidence adduced

before it.

The application is disposed of.

This order be communicated to the Counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

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