

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

LD-VC-CRIMINAL APPLICATION (BA) NO.235 OF 2020

Adarsh S/o Ashok Jaronde.

..VS..

The State of Maharashtra through Police Station Officer, Police Station, Imambada, Nagpur.

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

Court's or Judge's orders

Mr. A. Manohar, counsel for the applicant.
Mr. P. S. Tembhare, APP for the non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATED : 16/07/2020

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

Heard Mr. Atharva Manohar, learned Counsel for the applicant and Mr. P. S. Tembhare, learned Additional Public Prosecutor, for the non-applicant /State.

The incident in the present matter, is dated 24.04.2019 at about 10.30 p.m., when the applicant along with other co-accused is said to have assaulted the deceased Badal Gajbhiye. The FIR was registered on 25.04.2019 at 4.00 a.m. The eyewitness to the incident is claimed to be one Sunny Malkham, who in his statement did not disclose the names of the accused including that of the applicant but only said that the attack was by 3 – 4 unknown persons. Merely on suspicion the police arrested the applicant and other accused, on 25.04.2019 at 9.03 p.m. It is for the first time on 27.04.2019 that while recording a statement

Sunny Malkham discloses that the attack was made by the applicant as well as the accused persons. Sunny Malkham in all his earlier statements made to various persons had maintained the position that the attack was by some 3 – 4 unknown persons. It is only on 27.04.2019 that he discloses that the attack was by the applicant and the other co-accused. The reason for nondisclosure was that he was afraid as the incident has happened before his eyes. In his statement, he attributes attack by the applicant by using Koyata. The Koyata has been recovered at the behest of one Uddesh Meshram and not at the behest at the present applicant. The charge-sheet in the present matter has been filed on 18.07.2019 and since the date of arrest of the applicant which is on 25.04.2019, the applicant is behind bars.

Mr. Atharva Manohar, learned Counsel appearing for the applicant submits that except for the statement of Sunny Malkham, there is nothing on record to connect the applicant to the said incident. Even the statement of Sunny Malkham, according to him, is suspect as right from the date of the alleged incident till 27.04.2019, he kept quite and claimed ignorance about the names of the persons who had committed the attack. He therefore, submits that the statement of Sunny Malkham itself is under suspicion, as is the investigation which shows the arrest on 25.04.2019, in absence of anybody naming the applicant and other co-accused. He therefore, submits that it is a fit case in which the applicant needs to be released on bail, who is

languishing in prison since more than a year.

Learned Additional Public Prosecutor Mr. Tembhare, opposes the application and submits that the applicant has a criminal antecedent for which he invites my attention to Page No.207 of the record, in which Crime No.3299 of 2016 punishable under Sections 294, 506 (B) and 323 of the Indian Penal Code has registered against the present applicant by the Imamwada Police Station. He places reliance upon the statement of Sunny Malkham who attributes assault by the applicant on the deceased by use of Koyata and submits, that this is not a fit case for grant of bail.

Having heard the respective learned Counsels, I find that, the statement of Sunny Malkham is dated 27.04.2019, wherein he for the first time has disclosed the name of the applicant along with the other co-accused, whereas all throughout from 24.04.2019 till recording of the statement he consistently maintained his stand that the assault was by some unknown persons, which prima facie, supports the contention of Mr. Atharva Manohar, learned Counsel for the applicant that the veracity of the statement is prima facie suspect. The statement of Sunny Malkham is the only one linking the applicant to the incident. In light of the above situation, and what has been observed above, and the fact that the charge-sheet has been already filed on 18th of July 2019, I do not think any useful purpose shall be served by continuing the judicial custody of the applicant in the peculiar circumstances when the statement of the sole

eyewitness itself is under cloud. It may be that, the trial may lead to a different position altogether. In the circumstances, I pass the following order.

ORDER

1] The applicant be released on bail for the offences punishable under Sections 302, 120(B), 201, 143, 147, 148, 149 of IPC read with Sections 4, 25 of the Arms Act in Crime No.185 of 2019, registered with Police Station Imamwada, Nagpur, on his furnishing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties in like amount.

2] The applicant shall remain out of the city of Nagpur during the trial period except for the dates of the trial as fixed by the Sessions Court.

3] The applicant shall not threaten the witnesses and tamper with the evidence in any manner whatsoever.

4] The Jail Authority shall test the applicant for Covid-19 virus twice during the next 15 days and in case the test is found negative shall release the applicant upon the above conditions being fulfilled.

The criminal application is allowed in above

terms.

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

Sarkate