

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

LDVC/CRIMINAL APPLICATION (BA) NO. 98/2020

Mr. Rohit S/o Manohar Bholani

-VERSUS-

State of Maharashtra

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

Court's or Judge's Orders

Shri A. P. Raghute, Advocate for applicant.

Shri N. S. Rao, Additional Public Prosecutor for State.

CORAM : VINAY JOSHI, J.

DATE : JUNE 22, 2020.

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

2. Heard.

3. The applicant/accused was came to be arrested relating to the offence punishable under Sections 302 of the Indian Penal Code, 4/25 of the Indian Arms Act and 135 of the Maharashtra Police Act. The applicant claimed bail on various grounds like innocence, false implication and

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inadequacy of evidence etc. Besides that, learned counsel for the applicant has stated about impossibility of the occurrence as has been stated in police papers. The State resisted bail by submitting that the applicant has assaulted victim girl by means of dangerous weapon in which ultimately girl succumbed to sever injuries. It is submitted that there are two eye-witnesses to the incident who have seen the occurrence. Having regard to the deadly assault on innocence girl and the presence of eye-witnesses, bail is prayed to be rejected.

4. At the instance FIR lodged by the Uncle of victim dated 02.07.2018, the crime came to be registered. It is stated that on 01.07.2018, around 08.00 p.m. in the evening, the accused came to the house of informant where his niece namely Sanika (deceased) was leaving. The applicant expressed his desire to talk with Sanika as he allegedly having love affair with her. At the

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urge of applicant, the informant has called Sanika to his office which was on the ground floor of his residential place. At that time, informant, his wife and Sanika were present. The applicant had questioned Sanika as to why she is not accepting him and in the said talk, he suddenly took out dagger and assaulted at her waist and chest. The informant tried to snatch dagger in which he sustained bleeding injury to his palm. The applicant left the dagger at that place only and ran away.

5. It reveals that alleged incident took place on 01.07.2018 around at 08.00 p.m. whilst FIR was lodged on 02.07.2018 at around 01.11 p.m meaning thereby within five hours from the occurrence. Learned counsel for applicant submitted that there is variance of 10.00 to 15.00 minutes about the exact time of incident and therefore, it is a matter of suspicion. In-fact, informant stated that applicant arrived at their

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house and then incident occurred. The difference of few minutes is of little consequence or rather it will be looked at the time of trial.

6. It is submitted that the place where the incident took place is a small room having size of 8 to 10 feet and therefore, it is difficult for a person to assault girl especially when there are two other persons. It is submitted that in-fact, informant and other have attacked applicant in which he ran away and sustained injury. According to the learned counsel for applicant, if applicant had assaulted the girl then he would have been caught at the place of occurrence itself. All these aspects are part of trial as there can be several possibilities. There are statements of informant and his wife disclosing the direct complicity of the applicant. As per police papers after little talk, the applicant took out a dagger which itself prima-facie demonstrates his intention. Moreover, the injury report discloses that there are several incised wound at the vital part of the body.

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Though the victim died after 80 days, death co-relates with the injuries sustained in the attack.

7. It is argued that the statement of victim was not recorded though she was alive for 80 days. Admittedly, victim was hospitalized during entire period. Some police papers disclose that the Investigating Agency tried to record the statement of victim but she was not in said position. The said aspect would be looked at the time of trial.

8. Learned counsel for the applicant submitted that applicant/accused is arrested on 04.07.2018 and for near about two years, he is in Jail. According to him, there is no likelihood of commencement of trial in near future and therefore, applicant is entitled for bail. In support of said submission, my attention is drawn to the decision of Rajasthan High Court in case of *Rajendra Singh and anr. Vs. State of Rajasthan*,

1998 Cri LJ 2131. In-fact, there cannot be two similar cases so as to mathematically apply the decision of one criminal case to othre. Moreover, in case before the Rajasthan High Court, there appears to be 75 witnesses and having regard to the then facts, it was found fit to release the then accused. In case at hand, as per submission, there are near about 30 witnesses and it is a common knowledge that due to existing senario of COVID-19, the effective work is held-up for time being. Therefore, it cannot be said that for no reason, the trial Court is not proceeding so as to use discretion in favour of the applicant.

9. The learned counsel for the applicant invited my attention towards para 18 and 19 of the bail application to impress the right of accused. There can be no dispute about those legal proposition but the bail is matter of judicial discretion. It depends upon the facts and circumstances of each case. There is no dispute

that there is strong presumption of innocence in favour of accused but in the light of material collected by the Investigating Officer during the investigation, a prima-facie case is to be judged.

10. In case at hand, prima-faice, it is apparent that with determined intention , accused carried deadly weapon and had assaulted a defenceless girl on her vital part which was witnessed by two persons. Even the Uncle of victim was got injured while trying to rescue the victim. The FIR was lodged within five hours therefore, non-mentioning of name of culprit in the initial medical report carries no significance. True in current senario, one cannot predict as to how much time will be taken by the trial Court to conclude the case therefore, the applicant can move this Court after six months if the trial is not concluded. Of-course, the application if filed, would be decided on its own merit. Having regard to prima-facie case, direct evidence and gravity of

offence, the applicant does not deserve for bail.

11. It is made clear that above observations are prima-facie and limited to the extent of deciding the bail application. Trial nor the trial Court shall not get influenced by these prima-faice observations in any manner.

12. In view of that, the application carries no merit stands rejected.

13. 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

Gohane.