

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

CRIMINAL APPLICATION (BA) NO. 1179 OF 2019

Amol Ganesh Gedam .Vs. State of Maharashtra, through PSO, P.S.
Wardha, Tah and Dist. Wardha.

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

Court's or Judge's orders.

Mr. S.K. Bhoyar, Advocate for applicant.

Mr. M.K. Pathan, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 10, 2020

Heard Mr. S.K. Bhoyar, learned counsel for the applicant and Mr. M.K. Pathan, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed on behalf of the prosecuting agency and charge-sheet.

Applicant is arrested on 20.06.2019 in connection with Crime No.898/2019 registered with Police Station, Wardha for an offence punishable under Section 307 read with Section 34 of the Indian Penal Code.

Investigation is over and charge-sheet is already filed.

The charge-sheet would reveal that on 14.06.2019 Shrawan lodged his oral report regarding physical assault on his son Rohan on 13.06.2019. Oral report would show that his son Rohan is married with one Shital and she is residing separately at Nalwadi. On the day of the incident Rohan and his wife were invited for lunch at her parental house. In the evening, said couple came to the

house of first informant. After sometime when he was chit chatting with Mrs. Lata Patil that time as per First Information Report (FIR), the applicant Amol and his brother Sagar came and on account of old enmity, the applicant assaulted on Rohan on his head by weapon “*Pharsha*” and thereafter Sagar assaulted on Rohan on his back by knife.

From the FIR it is clear that the incident was witnessed by many persons.

The charge-sheet would show that supplementary statement of first informant Shrawan was recorded on 14.06.2019. In his supplementary statement he clarified that applicant Amol did not assault by “*Pharsha*” on the head of Rohan, but it was co-accused Sagar who assaulted by weapon “*Pharsha*” on head of Rohan. His supplementary statement would show that thereafter applicant Amol assaulted on back of Rohan by means of “*Pharsha*”. He did state that Amol was not having knife in his hand.

On 18.06.2019, statement of injured Rohan was recorded. Injured’s statement would show that assault on his head by weapon “*Pharsha*” was by Sagar and not by applicant Amol. However, his statement would show that he was assaulted by “*Pharsha*” on his back.

As observed above, the incident was witnessed by independent persons from the locality. Statements of Lata Patil, Sindhu Pendor, Manisha Kursange, Sindhu Masram, Gabbar Mishra, Vishal Kodape, Nayan Kadam and Ravindra Masram are available in the charge-sheet. Statements of all

these prosecution witnesses are recorded on 15.06.2019.

Perusal of their statements would show that firstly Rohan was assaulted by co-accused Sagar on his head, due to which he fell down and at that time applicant Amol tried to assault on Rohan. However, their statements do not show that applicant Amol gave any blow on his person more specifically on his back as claimed by father of the injured.

Supplementary statement of Rohan is also recorded. His supplementary statement would also show that he was assaulted by co-accused Sagar only and there was attempt on the part of applicant to assault.

Injury certificate which is available on record shows that there is an injury on the parietal region of Rohan however there appears to be no injury on the back of Rohan. Thus, the statement of first informant that his son Rohan was assaulted by applicant on his back stands belied and no independent witness together with the injured himself, is attributing actual assault on the part of the applicant. Admittedly, there is old standing rivalry. Therefore *prima facie* it appears that there is inclination on the part of the first informant to implicate the applicant in the crime.

Moreover, weapon used is also recovered at the behest of co-accused Sagar.

Investigation is over and looking to the factual matrix as available in the charge-sheet which are elaborately discussed in the forgoing paragraphs, in my view, case of the applicant can be considered favourably, however, by

imposing certain conditions, in view of the fact that he is having past criminal record at his discredit. Consequently, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant-Amol Ganesh Gedam be released on bail in connection with Crime No.898/2019 registered with Police Station, Wardha for an offence punishable under Section 307 read with Section 34 of the Indian Penal Code, on he executing P.R. bond in the sum of ₹15,000/- with one solvent surety in the like amount.
- (iii) Applicant is directed not to enter in Wardha City, until culmination of the trial.
- (iv) Applicant is permitted to enter in Wardha City only on the Court dates to attend the Court.
- (v) Applicant is directed to furnish address of his residence to the learned Judge of the Court below before whom he will be executing his bail bonds and the said learned Judge shall direct the applicant to attend the police station nearest to his place of residence, except Police Station, Wardha, once in 15 days, until culmination of the trial.

The application is disposed of.

JUDGE