

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

CRIMINAL APPLICATION (BA) NO. 1182 OF 2019

Rahul alias Dinesh s/o Krushna Moundekar .Vs. State of Maharashtra,
through PSO, P.S., Tahsil, Nagpur.

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

Court's or Judge's orders.

Mr.Nilesh Gaidhane, Advocate for applicant.
Mr. M.K. Pathan,A.P.P. for non applicant no.1-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 10 , 2020

Heard Mr. Nilesh Gaidhane, 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 prosecution and charge-sheet.

Applicant is arrested in connection with Crime No.252/2019 registered with Police Station, Tahsil, Nagpur for an offence punishable under Sections 302, 143, 144, 147, 148, 149, 506 read with Section 34 of the Indian Penal Code (IPC) and under Sections 4 and 25 of the Arms Act.

The investigation is over and the charge-sheet is already filed.

Deceased is one Ankit. There are eye witness account in this prosecution case including first informant Bhushan. The other eye witnesses are Soham and Saksham. Looking to the role attributed to the applicant by first informant and the eye witnesses, I am not burdening this order with detailed discussion of the prosecution case

inasmuch as neither the first informant or two eye witnesses state that the applicant actually assaulted on deceased Ankit either by means of any weapon or even by fist or kick blows, nor they are stating that the applicant was extorting other co-accused that they should kill the deceased. The role that is attributed by these prosecution witnesses is that the applicant was asking that nobody should come to save the deceased.

According to learned Additional Public Prosecutor in view of Section 149 of the IPC, the applicant has played his definite role. Whether the unlawful assembly was having common object to kill Ankit is a matter of trial. Even if the common object was formed by the unlawful assembly on the spot itself, it is also a question of trial. However, looking to the fact that there is no overt act of assaulting deceased either by means of any weapon or even by fist and kick blows and the discovery which could be seen from page 95 of the charge-sheet, will be a discovery in accordance with law will have to be decided and the fact that it is only the applicant apart from the other co-accused who is not having any past criminal record at his discredit, in my opinion, has made out a case for discretionary relief in his favour. Consequently, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant - Rahul alias Dinesh s/o Krushna Moundekar be released on bail in connection with Crime No.252/2019 registered with Police Station, Tahsil, Nagpur

for an offence punishable under Sections 302, 143, 144, 147, 148, 149, 506 read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act, on he executing P.R. bond in the sum of ₹15,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Tahsil, Nagpur thrice in a month i.e. on every 1st, 3rd and 4th Monday of each month and shall be with the Investigating Officer from 02:00 p.m. to 06:00 p.m., until culmination of trial.

The application is disposed of.

JUDGE