

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

CRIMINAL APPLICATION [BA] NO. 230/2021.

Kamlakar Gopalrao Chavhan.

-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 J.M. Gulhane, Advocate for the Applicant.
Ms. S. Jachak, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : APRIL 23, 2021.

Heard learned Counsel for the parties through video conference.

2. Police of Mutrizapur Rural Police Station have arrested the applicant in connection with Crime No.7/2020 for the offence punishable under Sections 302, 307, 324, 326, 452, 143, 147, 148 and 149 of the Indian Penal Code. This is the first bail application by the applicant/accused after filing of the charge sheet.

3. The State has strongly resisted the application by filing reply affidavit.

4. In nutshell it is the prosecution case that on 04.01.2020,

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around 6 p.m. the applicant Kamlakar along with co-accused Gajanan and Shrikrushna had assaulted the deceased Duryodhan at the instance of boundary dispute. The injured Duryodhan was shifted to his house after initial attack. Thereafter, the applicant and co-accused went to the house of injured Duryodhan and assaulted him by means of axe, sickle and sticks in which Duryodhan later on succumbed. In the said incident, the applicant and co-accused also assaulted the family members of deceased Duryodhan by means of weapons. On the following day of the occurrence, a report was lodged by the son of the deceased.

5. With the assistance of both the sides entire police papers were perused. It consists of several statement of eye witnesses who had witnessed the occurrence. For instance statements of Shubhanand, Saurabh, Aadesh, Amrapali, Madhuri and Chanda can be seen who specifically stated that at the relevant time the applicant was armed with an axe and had assaulted Duryodhan at his head by means of said axe. Particularly statements of Chanda and Rajendra discloses that besides deceased, the applicant had also assaulted them by means of an axe and attempted to commit murder.

6. After arrest, at the instance of the applicant, weapons

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used in the crime i.e. axe has been recovered. Moreover, blood stained clothes of the accused were seized. Post mortem notes discloses total 19 injuries on the person of the deceased, out of which some are incised wounds at vital part i.e. at the head of the deceased.

7. The learned counsel for the applicant has submitted that the applicant has been falsely implicated and there is counter complaint. In this regard he has attracted my attention to a first information report relating to Crime No.9/2020 registered at Murtizapur Gramin Police Station on 10.01.2020. Pertinent to note that the time of occurrence of Crime No.9/2020 was at 7 p.m. of 04.01.2020 i.e. after the exiting occurrence. Moreover, the said report was lodged on 10.01.2020, meaning thereby much later then the existing first information report. Hence, at this stage, it does not have any bearing.

8. It is submitted that at the relevant time the applicant was at hospital i.e. a faint attempt to raise a plea of alibi has been made. However, this is not the stage to consider the defence that too in absence of any convincing material. The applicant has also claimed bail on the ground of parity. However, the role of the applicant being grave than the other co-accused who are released

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on bail, the rule of parity does not apply to his case.

9. In short, there is ample evidence in the form of statements of eye witnesses describing specific role of the applicant of assaulting the deceased and 2 others by means of an axe. Moreover, there are circumstances like recovery of weapon and blood stained clothes of the accused. Having regard to all these circumstances, the applicant does not deserves to be enlarged on bail. In view of this, Criminal Application is rejected.

JUDGE

Rgd.