

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

CRIMINAL APPLICATION (BA) NO.270/2021

Ashwin s/o Rajendra Dudhkawar .vs. State of Maharashtra through its Police
Station Officer, P.S. Hudkehswar, Nagpur.

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

Court's or Judge's orders.

Mr. C. R. Thakur, Advocate for applicant.

Mr. A. M. Kadukar, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : APRIL 20, 2021

This is an application for grant of regular bail filed under Section 439 of the Code of Criminal Procedure. The applicant is arrested in connection with Crime No.314/2020, registered with Police Station, Hudkeshwar, Nagpur for an offence punishable under Sections 143, 147, 149, 302 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

Heard Mr. Thakur, learned counsel for the applicant and Mr. Kadukar, learned A.P.P. for non applicant-State.

Investigation of the crime is complete and charge-sheet is already filed by the investigating agency before the competent Court. The entire copy of charge-sheet is placed on record along with this application. The learned counsel for the applicant and the learned A.P.P. took me through the relevant material in the charge-sheet for considering this bail application.

Deceased is one Chetan Metangale. The FIR is lodged by his elder brother-Sachin Metangale. Incident in question has occurred on 15.08.2020 at about 17:30 hrs. and the report by Sachin is lodged on the very same day with Police Station, Hudkeshwar at about 23:42 hrs.

From the FIR, it is clear that the first informant is not the eye witness. His report would show that he made inquiry from the person residing near Uday Nagar and from the information which he gathered, it was revealed to him that initially the present applicant by name Ashwin took up quarrel with his brother, deceased Chetan, gave him fist blows and at that time, the co-accused Badal Naitam, a juvenile in conflict with law, took out a dagger and assaulted on him, resulting into death of his brother.

According to the learned counsel for applicant and the learned A.P.P., there are three eye witnesses to the incident. Their statements are available on the record of this case at page nos.169, 170 and 171. They are; Amit Nagpure, Shubham Metantale and Higes Nasare. Their statements are recorded immediately. Reading of statements of these three eye witnesses would show that at the time of assault, the accused persons were having masks on their faces. Therefore, as per the statement of Amit, the deceased as well as assailants were not known to him and since the assailants were wearing masks on their faces, he will not be able to identify them. Statements of other eye witnesses Shubham and Hitesh

show that though assailants were having masks on their faces, they will be able to identify them from their physic and the their eyes. Their statements also show that they could gather names of the assailants including the present applicant from the discussion that was going on amongst the local residents.

During the course of investigation, police machinery has seized clothes of the applicant which were on his person. The recovery panchanama, which is at page no.157 does not show that clothes of the applicants were having any blood stains.

In that view of the matter, though a submission is made in the affidavit opposing the bail application that the clothes of the applicants are sent to the Chemical Analyser and report is awaited, it is of no consequence.

Weapon in question is recovered and seized at the behest of Naitam, a juvenile in conflict with law. Even according to the prosecution case, Naitam was carrying dagger and from his pocket only he took out the same and assaulted on the deceased. It is not the case of the prosecution that the knife was handed over by the present applicant. At this stage, even though the entire case of the prosecution is accepted against the present applicant, the role that is attributed to the present applicant is that he picked up the quarrel and he caught hold of the deceased. It is not the case of the prosecution that the applicant has assaulted by means if knife, resulting into injuries, causing his death as mentioned in the post mortem report.

Whether the applicant was having intention to kill the deceased is a matter of trial. Presently, though the case is registered as Sessions Trial No.45/2021, charge is not framed and there is no dispute on this aspect before this Court. It is also not in dispute before this Court that past record of the applicant is clean.

In the conspectus of aforesaid discussion, I am of the view that application of applicant can be considered favourably. Consequently, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Ashwin Rajendra Dudhkawar be released on bail in connection with Crime No.314/2020, registered with Police Station, Hudkeshwar, Nagpur for an offence punishable under Sections 143, 147, 149, 302 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, on he executing P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend Police Station, Hudkeshwar once in a month i.e. on second Tuesday of every month between 03.00 p.m. to 05.00 p.m.
- (iv) The applicant shall not cause any threats to any of the witnesses and shall not take any steps which may prejudice to the prosecution case.

The application is disposed of.

JUDGE