

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

Criminal Application (BA) No. 906 of 2021

[Yash S/o Yuvraj Burade ..vs.. State of Maharashtra through P.S.O. Kuhi PS., Tq. Kuhi, Dist. Nagpur]

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

Court's or Judge's orders

Mr. Amol G. Hunge, Advocate for applicant
Mr. N. S. Rao, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 16-09-2021

The applicant is seeking bail in connection with Crime 451/2020 registered with Police Station, Kuhi, Tah. Umred, District Nagpur for the offences punishable under Sections 302 and 364 read with Section 34 of the Indian Penal Code (IPC) and relevant provisions of the Arms Act.

2. The accusation is that the applicant played a prominent role in the brutal murder of Kunal Charde and Sushil Bawane.

3. The dead bodies of Kunal Charde and Sushil Bawane were found at Dongargaon Shivar on Kuhi Road in the morning of 16-11-2020 and the report is lodged by Police Constable Bharat Thite.

4. The prosecution version is that the twin murders is a fall out of rivalry to assert supremacy over the members of the rival gang. The incident is in two parts. Initially, the two deceased were manhandled and physically assaulted at the residence of accused Balu Dudhankar. The version of eye witness Ashish Gadekar who is a close relative of the applicant, is that while the two deceased were initially assaulted by Balu Dudhankar and some co-accused, the applicant also joined in the assault. Ashish Gadekar states that he did make an attempt to restrain the applicant, however, the applicant shoved him aside. Ashish Gadekar then states that the deceased were forcibly made to sit in Balu Dudhankar's car. The applicant occupied the front seat besides the driver and Balu Dudhankar and Rahul Lambat occupied the rear seat squeezing in two deceased between them. Co-accused Nishant took control of the steering wheel.

5. The second part of the incident is quite gory. The two victims were taken on the Kuhi Road, they were forced out of the car at a secluded spot, initially bludgeoned with cement pole, then assaulted with knife and finally again assaulted with cement pole to ensure that there is no chance of survival.

Incident happens to be witnessed by Shashank Waigokar who was passing by on his motorcycle and who stopped the motorcycle since he was blinded by the headlights of the car.

6. Learned counsel Mr. Hunge would submit that the prominent role in the second part of the incident is not attributed to the applicant. The submission is contrary to the material on record. The applicant was the only person who occupied the front seat besides the driver. This is the version of a close relative of the applicant. The witnesses who saw the actual murders categorically states that the person who disembarked from the front dealt the initial cement pole blows on the two victims who are lying on the ground and then Balu Dudhankar assaulted them with knife.

7. Mr. Hunge submits that no identification test was conducted. Assuming no identification test is conducted, the same is irrelevant in the context of the evidence on record that the applicant was the only accused who was occupying the seat besides the driver and who is referred to by the eye witness to the murders as a person who dealt the first cement pole blows

on the two victims. Moreover, there is extra judicial confession made by the applicant to Ashish Gadekar.

8. Even if, it is assumed *arguendo* that Mr. Hunge is right in submitting that it was not the applicant who assaulted the two victims, the fact that he participated in the kidnapping makes him equally responsible for the murders, since the prosecution is invoking Section 34 of the IPC and the material on record indicates that while the two victims were being kidnapped, the other co-accused were instigating and emphasizing that they should not be “left”.

9. While it is made abundantly clear that every observation made herein is restricted for the purposes of deciding the application for bail, at this stage, there is ample material on record to connect the applicant with crime, which is heinous, and sufficient to shock the collective conscious of the society.

10. In all fairness to Mr. Hunge, he did make an attempt to argue that there are certain inconsistencies, particularly, as regards the timings in the versions of the witnesses which create a doubt about the prosecution case. At this stage, I am not

inclined to undertake microscopic examination of the alleged inconsistencies, particularly, since I am otherwise satisfied of the existence of an extremely strong *prima facie* case.

11. The application is dismissed.

JUDGE

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