

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

Criminal Application (ABA) No. 728 of 2020

(Tezram Gopalrao Muley ..vs.. State of Maharashtra through P.S.O., P.S., Kanhan, Nagpur)

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

Court's or Judge's orders

Mr. D. V. Chauhan with Mr. C. B. Barve, Advocates for the applicant
Mr. M. K. Pathan, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 09-03-2021

Heard.

2. The applicant is apprehending arrest in Crime 358/2020 registered with Police Station, Kanhan, District Nagpur for the offences punishable under Sections 307, 353, 333 and 143 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act.

3. The case of the prosecution is that the applicant was a member of unlawful assembly whose object was to assault and kill the complainant – Police Constable.

4. The case of the prosecution is that the injured Police Constable Mr. Ravindra Chaudhary was lured to come at Guhegari Chowk, Kamptee on the pretext that co-accused Kamlesh Meshram would like to apologize.

However, after Kamlesh Meshram did arrive, he started physically assaulting the Constable and the accused Dadarao @ Tejram and other co-accused who were lurking in the dark joined Kamlesh Meshram and Kapil Rangari and mercilessly assaulted the Police Constable. The police constable escaped the clutches of the assailants and tried to flee. However, he was chased by co-accused Kamlesh Meshram and Aman Khan and inflicted several stab wounds.

5. Learned counsel Mr. Deven Chauhan would submit that the only role attributed to the applicant is assault by fist and kicks and that *prima facie*, the ingredients of Section 307 of the Indian Penal Code are not made out. The submission is duly noted as a courtesy to the counsel. The prosecution has invoked Section 149. *Prima facie*, the applicant was a member of the unlawful assembly which had a common object and, therefore, the precise role played by the applicant is irrelevant. He would be held responsible and accountable for the acts of the co-accused.

6. The next submission is that custodial interrogation is not necessary. Custodial interrogation is imperative for reasons more than one. Apart from the anxiety of the investigating agency to unearth the various facets of the crime, the fact that the applicant is facing as many as 11 other prosecutions including prosecutions for serious offences justifies the apprehension of the prosecution that unless the applicant is taken in custody, the witnesses would not be in a position to freely and fearlessly cooperate with the investigating agency. I have perused the statement of one eye witness recorded under Section 161 of the Code of Criminal Procedure and the statement of same eye witness recorded under Section 164 of the Code of Criminal Procedure. It is apparent that the reputation or rather the notoriety of the applicant is working on minds of the witnesses.

7. In no view of the matter is the applicant entitled to any discretion whatsoever.

8. The application is dismissed.

JUDGE