

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

Criminal Application (BA) No. 1056 of 2021

(Mohsin Killedar S/o. Ahmed Killedar ..vs.. State of Maharashtra through P.S.O., P.S. Pachpaoli,
Nagpur, Tah. & District Nagpur)

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

Court's or Judge's orders

Mr. S. P. Dharmadhikari, Senior Advocate with Mr. C. S. Dharmadhikari,
Advocate for the applicant
Mr. N. R. Rode, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 17-11-2021

The applicant is one of the three accused who are implicated in Crime 666/2020 registered with Police Station, Pachpaoli, Nagpur for offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The prosecution story is that there was a dispute between deceased Mahesh Tiwari and accused Vivek Godbole. Prosecution contends that both owned adjoining plot at Manish Nagar and while Vivek Godbole was insisting that both the plots be sold together to fetch better price, the deceased was in no mood to oblige which led to bad blood.

3. The prosecution case is that on 17-12-2020 at 12.00 noon or thereabout, the deceased, applicant Mohsin and co-accused Vivek Godbole were having liquor at the Chinese food restaurant of co-accused Pillewan. Relying on the CCTV footage and the statements of two witnesses who claim to have witnessed the entire incident while standing on the road, the prosecution alleges that between 4.00 to 4.15 p.m., Mahesh was brutally assaulted and done to death. The role attributed to the applicant is that he assaulted Mahesh with a beer bottle. The prosecution contends that Mahesh was assaulted by a metal frying pan and knife by Vivek Godbole who picked up the same from the food stall.

4. The postmortem report refers to as many as 38 injuries. Most of the injuries are *prima facie* attributed to assault either by the knife or the frying pan. The opinion of the Doctor is that injuries 1, 2, 6, 11, 12, 14 to 16 and the corresponding internal injuries are sufficient in the ordinary course of nature to cause death. *Prima facie* the said injuries appear to have inflicted by the knife since all the injuries are stab wounds.

5. I have seen the CCTV footage. It appears from the CCTV footage on which the prosecution is heavily relying that after the co-accused Vivek Godbole picked up the knife, when he was trying to enter the hotel, the applicant was attempting to dissuade him from doing so. Be that as it may, since it would not be appropriate to minutely evaluate the material on record lest some prejudice will be caused to co-accused if and when they apply for bail, it would suffice to note that considering the role of the applicant, even going by the case of the prosecution, a case for bail is made out.

6. While the learned Additional Public Prosecutor Mr. Rode does submit that the applicant faced the prosecution under Section 302 of the Indian Penal Code, the learned Senior Counsel Mr. S. P. Dharmadhikari states that the prosecution ended in acquittal vide judgment dated 13-1-2012 in Sessions Case No. 204 of 2010. It is not the case of the prosecution that since then the applicant has indulged in any criminal activity.

7. The application is allowed.

8. The applicant be released on bail in connection with Crime 666/2020 registered with Police Station, Pachpaoli, Nagpur for offence punishable under Section 302 read with Section 34 of the Indian Penal Code on furnishing PR bond of ₹ 16,000/- (Rupees Sixteen Thousand) with solvent surety of like amount.

9. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

10. The applicant shall not leave the country without the permission of the jurisdictional Court.

JUDGE

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