

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

CRIMINAL APPLICATION (BA) 1196 OF 2021

(Avinash s/o.Raju Dange..v.. State, thr PSO, PS Malegaon, Dist. Washm)

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

Court's or Judge's orders.

Mr. R.L. Kadu, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.

DATE: 01.12.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 95/2021, registered with Police Station Malegaon, District Washim, for offences punishable under sections 302, 504, 506 read with section 34 of Indian Penal Code ("IPC").

3. The report is lodged by Mrs. Gangu the wife of the deceased. In nutshell, it is alleged that on 17.3.2020, there was a quarrel between her husband Sanjay and the accused. The issue was that the accused who have come to the village to sell vegetables had parked their vehicle inappropriately to which Sanjay objected. According to the report, Sanjay was issued threats of serious physical harm. It is then alleged that Mrs. Gangu

learnt from one Abhishek that the vegetables sellers have assaulted her husband Sanjay near the residence of one Mr. Gattubhai. Mrs. Gangu rushed to the spot and found her husband in a seriously injured condition. Sanjay was taken to the hospital in an autorickshaw and according to Mrs. Gangu, he disclosed that he was assaulted by accused Amol Chavan and his employee Avinash Dange, who is the present applicant. Sanjay was allegedly assaulted with wooden stick/log on the head and chest, is the allegation in the report.

4. Perusal of the autopsy report shows that the probable cause of death is mentioned as spleen rupture. The spleen allegedly ruptured completely in two parts causing severe bleeding and the death is apparently due to such excessive bleeding due to spleen rupture. In so far as assault on head is concerned, injury 1 is only an abrasion, injury 2 is also an abrasion over the left eye and injury 3 is contusion over left lower aspect of back, injury 4 is contusion over left hypochondria which according to the learned counsel for the applicant and the learned APP is the injury which corresponds with the spleen rupture.

5. The learned counsel for the applicant Mr. R.L.Kadu

submits that there is no eye witness account as such and the statements of the witnesses are on the basis of hearsay information. Other than the alleged oral dying declaration, there does not appear to be any direct evidence as such. That apart, the trial court will have to address the question whether the offence, even if the allegations are established, fall under 302 of IPC, given the nature of the injuries and the assault.

6. Co-accused Amol Chavan, who is the employer, is already released on bail by the Sessions Court.

7. It is not the case of the prosecution that the applicant has any criminal antecedent or that he is likely to flee from the course of justice. I do not see propriety in continuing incarceration.

8. The application is allowed subject to the following conditions:

(i) The applicant be released on bail in connection with Crime 95/2021, registered with Police Station Malegaon, District Washim, for offences punishable under sections 302, 504, 506 read with section 34 of Indian Penal Code,

on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

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

(iii) The applicant shall not leave the country without the permission of the trial Court.

Judge

Belkhede