

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

CRIMINAL APPLICATION (B.A) NO. 137/2022
(Shivam S/o Sharad Kukade Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R. M. Daga, Advocate for applicant.
Mr. A. Chutke, APP for non-applicant/State.

CORAM :- AVINASH G. GHAROTE, J.

DATED :- 10.03.2022

Heard.

2. The learned APP has tendered the reply of the State in the Court which is accepted and taken on record. Heard Mr. R. Daga, learned counsel for the applicant and Mr. A. Chutke, learned APP for State.

3. The applicant has been arrayed for offence under Sections 302, 336, 504, 325 read with Section 34 of the Indian Penal Code. The incident occurred on 29.04.2021, the applicant was arrested on 30.04.2021 and the charge-sheet has been filed on 12.07.21.

4. Learned counsel for the applicant submits that that the applicant has been arrested merely on the basis of suspicion. According to him, none of the witnesses names the applicant and therefore, the presence of the applicant even prima facie, has not been demonstrated on the spot of

the incident. He further submits that the statement of co-accused namely Deepak Purak under Section 27 of the Evidence Act and the recovery of the clothes from the applicant, do not indicate anything for his involvement in the crime and therefore, the applicant needs to be released on on bail.

5. Learned APP opposes the application by contending that in the afternoon on the fateful day, the presence of applicant on the spot is established and along with said Deepar Purak. The complaint is also apparent from the statement therefore, learned APP submits that considering the above position, the application needs to be rejected.

6. The charge-sheet indicates that on 29.04.2021 in the afternoon there was altercation between accused No. 1 Deepak Purak who reside adjusant to the house of Harihar Ramrao Bochare, in whose house the informant Akash Gedam was residing on rent. On account of account accused No. 1 having stored building construction material, the storage was objected by the informant. Thereafter, on the same day at about 09.00 pm the accused No. 1 again came with two persons to the house of the Harihar Boachare and started shouting asking the informant to come down, whereupon he was obstructed by his wife. Some person from the same locality intervened as a result of which there ensued the fighting between them in which the deceased failed down, as a result of blow on his head by

the accused No. 1 while running away and the person along with the Accused No. 1 are said to have assaulted the deceased on his face and head, resulting in his demise.

7. The post-mortem report (Page 78) shows only one injury on the head which resulted in the demise of the deceased as per the PM report (Page 81). Though there are several witnesses, not a single one of them, except the complainant Akash Gedam names the applicant as the persons accompanying the accused No. 1 at the time of the incident on 29.4.2021 at 09.00 pm. Though Harihar Bochara also was knowing the applicant, however he does not name the applicant, to be a person present on the spot at the time of the incident however, at the police station the applicant is stated to have told his name as Shivam Kukade.

8. Considering the above matter and the fact that the applicant has been incarcerated since 30.04.2021 and charge-sheet has been filed on 12.07.21 and except for Akash Gedam who had intention to implicate the applicant, prima facie, there does not any other material available on record, to indicate the involvement of the application. In view of which, there is no need to continue incarceration of the applicant. Hence, following order:-

(I) Application stands allowed and disposed of.

(II) Applicant Shivam S/o Sharad Kukade be released on on bail in Crime No. 489/2021 for offence under Sections 302, 336, 504, 325 read with Section 34 of the Indian Penal Code on his furnishing P. R. Bond of Rs. one lakh with two solvent surety in the like amount.

(III) The applicant shall not tamper with the evidence of the prosecution witnesses in any manner or try to influence them directly or indirectly.

(IV) The applicant shall not enter the territorial jurisdiction of Police Station Rajapeth, Amravat except for attending the Sessions Court.

(V) The applicant shall attend each and every date before the learend Sessions Court and shall ensure that the trial is not protracted on his count.

(AVINASH G. GHAROTE, J)

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signed by
JITENDRA
BHARAT
GOHANE
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