

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (APPP) NO.938 OF 2022 IN
CRIMINAL APPLICATION (BA) NO.622 OF 2022

Vaibhav alias Siddarth s/o Ashokrao Bante Vs. State of Maharashtra, PSO, PS Kotwali, Nagpur

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

Court's or Judge's orders.

Shri C.R. Thakur, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant/State.
Shri S.R. Bahulkar, Advocate to assist the prosecution.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 14, 2023.

This is an application for grant of permission to assist the prosecution.

2. For the reasons stated in the application, the application is allowed. Learned advocate is permitted to assist the prosecution.

3. The application stands disposed of.

CRIMINAL APPLICATION (BA) NO.622 OF 2022

4. This is an application under Section 439 of the Code of Criminal Procedure.

5. The accusation against the applicant is that he along with five other persons have committed murder of one Mahesh Lambat. According to prosecution, in the year 2011, Subhash Shahu, father of co-accused Ashwin Shahu, was

murdered by Mahesh Lambat (deceased in the present case) and some others. Thus, Ashwin Shahu has, in a way, taken revenge of murder of his father. Thus, there is reason to believe that Ashiwin Shahu could be responsible for the murder, of course, if the evidence against him is cogent. The question is whether the applicant, who is not at all connected with the murder of Shubhas Shahu could be said to be involved in the present crime. The evidence collected will have to be considered in the background of what has been stated hereinabove.

6. The incident in the present case has occurred on 14.09.2021. There are two eye witnesses. One is Prince Sathawane, whose statement is recorded on 15.09.2021. He states that he was going for his routine walk at about 8:30 p.m. He saw Mahesh Lambat is running, followed by Piyush alias Dadya Malwande, Vaibhav Bante (present applicant), Lokesh and couple of unknown persons. Piyush was holding weapon like drager (कोयता). The unknown persons were holding wooden sticks and knife. So far as the present applicant is concerned, the witness does not state that he was holding any weapon. The witness has then stated that while running Mahesh fell down. Piyush attacked him by drager(कोयता). The unknown persons also assaulted him. However, no overtact has been attributed to the applicant. Thus, except for presence of the applicant, there is absolutely nothing against him.

7. Learned Additional Public Prosecutor submits that the provision under Section 149 of the Indian Penal Code is also invoked.

8. That by itself, at this stage, may not be relevant considering the fact that the applicant was neither holding any weapon in his hand nor is he seen assaulting Mahesh.

9. Other eye witness is Sheikh Kasim. His statement is also recorded on 15.09.2021. He states that he had seen Mahesh Lambat running on the road. Four persons were following him with weapons. He has also seen that Mahesh Lambat was assaulted by four persons by weapons like sword and wooden sticks. This witness, though has seen the incident, has not really named either deceased or other the assailants.

10. Learned advocate for the applicant submits that the applicant was subjected to test identification parade before this witness but he has not identified the applicant.

11. Thus, the only evidence against the applicant is in the form of statement of the first witness namely Prince Sathawane, which indicates only the presence of the applicant but without any overtact.

12. The charge-sheet has been filed on 09.12.2021. The applicant is behind bars since 15.09.2021. It is informed that

the charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant is staying in his own house at the address mentioned in the application. Thus, the applicant is having strong roots in the locality.

13. In the circumstances and considering the nature of evidence against the applicant, no purpose will be served by keeping the applicant behind bars.

14. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

15. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Vaibhav alias Siddharth Ashokrao Bante, be released on bail, in connection with Crime No.348/2021, registered with Police Station, Kotwali, Nagpur City, District Nagpur for an offence punishable under Sections 302, 143, 147, 148, 149, 379 of the Indian Penal Code, Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act, on he furnishing P.R.

Bond in the sum of ₹25,000/- with one solvent surety in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The Applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

JUDGE

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