

Sessions Case No.87/2018

Piyu Popat Dawalse (Bhil)

-versus-

The State of Maharashtra

Order Below Exh.38

Accused has sought bail under Section 439 of Cr.P.C. in connection with Crime No.129/2018 registered with Dhule Taluka police station for the offences punishable under Sections 302,324, 323, 504, 506, 34 IPC.

02. In short, facts of the case are as under;

On 28-04-2018 informant Dagdu Marathe lodged FIR. On 27-04-2018 at about 9-30pm he and deceased Devidas Pawar were walking to the land of informant situated within limits of village Mukti. They decided to sleep in the land of informant for that night. Accused Piyu Dawalse (present applicant) and Raju More intercepted them and demanded money to consume liquor. Both accused gave push and pulls and abused the informant and Devidas as they did not pay money. Accused Piyu also called Mahendra by a phone call. Mahendra came to the spot on motorcycle and he also abused and threatened the informant and Devidas. Somehow both rescued themselves and went to the field of informant. Accused Piyu and Mehendra threatened the informant and his friend that they would follow them in the field and they would teach them a lesson.

03. Informant and Devidas went to the field and after taking dinner they slept there. Between 11-00 to 11-30pm informant received sudden blow of wooden rod on his nose. He woke up and in torch light he saw that accused Piyu stood nearby holding axe. He

again dealt a blow of the wooden rod on informant's head. Mahendra Devre dealt a blow of stick and Raju More dealt kick blows to the informant. To save himself informant beat Piyu by the torch. He got annoyed and dealt blows of axe on head and throat of Devidas who slept on the ground. Informant realized that Devidas sustained severe injuries, he got frightened and ran towards the village. He informed Devidas's wife and with some villagers went to Dhule Taluka police station. FIR came to be registered. Accused/applicant was arrested on 28-04-2018 and since then he is in custody.

03. The State has opposed bail application on various grounds.

04. Ld. Adv. Shri.M.S.Bhandari for the accused has submitted that case is committed and the applicant is under trial prisoner since one year. This is first bail application. There is no previous enmity so there is no motive or intention to commit offence. C.A. report is not filed. Incomplete chargesheet is filed. Other accused are on bail. Trial may take much time. Custodial interrogation is over. Accused is local resident and ready to abide by conditions of bail.

05. Ld.APP Shri.N.B.Kalal has submitted that offence is very serious. Presence of accused and his role is clearly made out in FIR. There is prima facie evidence of involvement. He is not entitled for parity. C.A. reports are filed. Accused used deadly weapon like axe.

06. On the point of incomplete chargesheet Shri.Bhandari has relied on the decision of Hon'ble Bombay High Court in **Punjaram s/o. Ashroba @ Asroba Kangne @ Ors. Vs. State of Maharashtra**

2005 ALL MR (Cri) 1020. Said citation deals with the aspect of Section 167(2) Cr.P.C. In fact, apart from C.A. report there is no claim that other papers of investigation are not filed. Due to procedural delay which is not within the control of Investigation Officer C.A. reports are received belatedly. In any case, C.A. reports are submitted subsequently. So there is no substance in the submission of Ld. Counsel. Shri.Bhandari has next relied on the decision of Hon'ble Apex Court in **Manoranjana Sinh @ Gupta Vs. Central Bureau of Investigation, 2017 DGLS (SC) 71**. Reliance is placed to buttress the point that pre-trial custody is not to give a test of imprisonment as a lesson. If reported case is seen, there are various medical ailments to the applicant and offence involved was Chit Fund Scam. Facts of both matters are quite different and the accused cannot claim benefit of the observations made by Hon'ble Apex Court.

07. FIR and other papers of investigation show that applicant Piyu is the main assailant. He dealt two blows to the informant by wooden rod of axe. When informant beat him with the help of torch, he got annoyed and dealt deadly blows of axe on the head and throat of Devidas. Informant is the eye witness and one of the victims. Weapon of offence axe is seized from the spot of incident. Photographs of the axe shows that it was stained with blood. There is prima facie evidence about involvement of the accused. His role is far more serious than the other accused. He cannot claim benefit of parity. Considering aforesaid incriminating material and nature of offence, this is not fit case to grant bail. In the result, I pass following order.

ORDER

The application is rejected.

Sd/-

[A.D.Kshirsagar]

Addl. Sessions Judge, Dhule.

Date:-25-04-2019.

Certificate

I certify that the contents of this PDF file
are word to word as per Original Judgment/order.

Name of the Steno : Nandkishor E. Kolhe
Name of the Court : Court of District Judge-3
& Addl. Sessions Judge, Dhule.
PDF Uploading Date : 26-04-2019.

Sd/-...
Stenographer