

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

Criminal Application [ABA] No.4 of 2015

(Rukkaiya Bee w/o Shaikh Sadique

vs.

The State of Maharashtra, through P.S.O. Buldana)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

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Mr. C.D. Thamke, Advocate for the Applicant.

Mr. P.V. Bhoyar, A.P.P. for the Non-Applicant/State.

Mr. K.P. Sadavarte, Advocate for the Intervenor.

CORAM : PRASANNA B. VARALE, J.

DATE : FEBRUARY 05, 2015.

Heard Mr. C.D. Thamke, the learned Counsel for the applicant.

The applicant is before this Court for the protection in the nature of pre-arrest bail apprehending his arrest in connection with Crime No.207/2014, registered at Police Station Buldana (City), for the offences punishable under Section 302, 325, 326, 504, 506 read with Section 34 of the Indian Penal Code.

This Court, while issuing notice on 15/01/2015 on considering the material on the backdrop of the submission of the learned Counsel for the applicant as well as the learned Counsel assisting the prosecution, granted *ad interim* protection to the applicant. It will be useful for the purposes of

consideration of the prayer to refer certain facts at the costs of repetition, though they are referred in the order granting *ad interim* protection. The report is lodged at the instance of Sk. Sayeed Sk. Qureshi on 31/10/2014. In the report, it is stated that the informant/complainant, resident of Iqbal Nagar, Buldana is carrying business of a petty contractor in timber material. One Sk. Sabir s/o Sk. Sadique is his neighbour and on account of some trifle dispute between the children, he picked up the quarrel, is the submission in the report. On the fateful day i.e. on 31/10/2014, at about 12:30 p.m., he was present in the house (*emphasis supplied*). Sk. Sabir, who was standing in front of his house, was hurling abuses and was stating that a child from the family of Sk. Sayeed threw a stone towards his house. The mother of Sk. Sayeed viz. Rajiya Bee wanted to pacify Sk. Sabir by saying, as the issue is a trifle on account of play of children, he should forget it. Sk. Sabir gave abused to mother of complainant/informant Sk. Sayeed and when Sk. Sayeed tried to intervene in the matter, Sk. Sabir gave a blow of weapon like knife on his nose causing a bleeding injury to him. His brother namely Sk. Fahim then intervened in the matter. The brother of Sk. Sabir viz. Sk. Mujahid gave a blow of wooden rafter to the brother of Sk. Sayeed i.e. Sk. Fahim. As Sk. Fahim was severely injured, he was immediately shifted to the hospital and was admitted in the hospital. Then, it is stated that the

mother of Sk. Sabir, whose name is not known (*emphasis supplied*), also abused and gave threats of life. This is the report made to Police Station Buldana (City), on 31/10/2014 at about 01:05 p.m.

The learned Counsel for the applicant submitted that assuming the report as it is, though not admitting the same, the role attributed to the applicant is of hurling abuses and threats of life. The learned Counsel for the applicant further submits that the applicant is a lady of 50 years of age and doing household activities. He further submits that the applicant was protected by interim order of this Court and the applicant complied with the orders of this Court. The learned Counsel further submits that the applicant was and is ready to extend her cooperation to the investigating agency.

The learned Counsel Mr. Sadavarte assisting the prosecution and the learned A.P.P. vehemently oppose the application. It is the submission of Mr. Sadavarte and the learned A.P.P. that the report is the starting point for the investigating agency to set in motion. The report cannot be equated with an encyclopedia giving an essay like version of the incident. It is submitted that in the process of investigation, the statements of witnesses were recorded. The learned A.P.P. submits that the brother of the complainant/victim, who was immediately shifted to hospital, subsequently lost his life. The

learned A.P.P. also made an attempt to submit that the applicant is the string puller, who provided the material like wooden rafter causing severe injury to the victim. The learned A.P.P. also made an attempt to submit that the applicant is not extending the cooperation to the investigating agency. The learned A.P.P. made available the material for my perusal.

The medical material in the form of postmortem report shows that the cause of death is due to head injury. The postmortem report includes the graphic disclosure. It is not in dispute that the victim received a severe blow to the vital part of the body, but merely the medical report shows the cause of death as head injury cannot be a reason to negate the prayer of the applicant. What is the material is to consider the role played by the applicant and whether the applicant made out a case for the protection in the nature of pre-arrest bail. The report was lodged by not only a witness to the incident but a victim of the incident. This informant/complainant, who gives all the details such as the prequel of the incident, namely the quarrel over the play of children, the abuses hurled by Sk. Sabir, Sk. Sabir armed with a weapon like knife giving a blow on the part of body i.e. nose, injury in the nature of a bleeding injury, intervention of his brother Sk. Fahim, assault laid by the brother of Sk. Sabir with wooden rafter and very interestingly states that he is not aware

about the name of mother of Sk. Sabir and states that she gave abused to his mother and gave threats of life. Now on the backdrop of this report, which is lodged at the instance of victim, the statements, which are recorded after a week i.e. from 05/11/2014, these witnesses state that the applicant was in such an aggression saying words “MAR DALO, MARO KATO, SODNA NAHI”. They states that the applicant then went in the house provided a wooden rafter to her son Sk. Mujahid. They further state that the applicant gave kick blows to the private part of the victim, who was lying down. All these witnesses state in chorus, whose statements are recorded on between 5th to 9th of November,2014. Some of the witnesses also claim to be eye witnesses. The complainant/informant, who himself was a victim, gave a detailed version of the incident namely the role played by those assaulter, weapon carried by them. The injuries received to him and his brother, is silent on any active role played by the applicant and refers only the abuses hurled by the applicant. Whereas all the other witnesses gave a version of an active role played by the applicant in their statements recorded after a week. Though, there cannot be any dispute on the proposition that the F.I.R. is not an encyclopedia, at the same time, while considering the prayer for protection in a nature relating to the liberty of a person, the Court neither shut its eyes to the material placed on record nor look to the material with a

mechanical approach. In the present matter, as referred above, the report, which was lodged immediately to the police by the victim, states nothing about any active role played by the applicant and for the material, which is collected after a week, the witnesses come with a somersault to the version of the victim and state that the applicant provided wooden rafter and gave kick blows to the victim.

Thus, there is a considerable merit in the submission of the learned Counsel for the applicant that the report and the material collected by the investigating agency raises an element of suspicion over the story. Though the learned A.P.P. made an attempt to submit that the applicant is not cooperating the investigating agency, in the reply filed by the State, there is nothing of such objection raised nor the material placed before the Court for perusal shows that the investigating agency called upon the applicant on a particular day and the applicant, in spite of receiving such an intimation, avoided to attend the Investigating Officer. Though at the stage of consideration of pre-arrest bail application, it is not necessary to refer the material at such length and in such detail, the material is referred to on the backdrop of a very strong opposition raised by the learned Counsel assisting the prosecution in opposing the application.

Considering the material, in my opinion, the learned Counsel for the applicant has made out a case.

In the result, the application is allowed. The order passed by this Court dated 15/01/2015 granting ad-intrim protection to the applicant is confirmed with a condition that the applicant to attend Police Station Buldana (City) on every second and forth Sunday of the month from 09:00 a.m. to 12:00 noon and maintain a diary of her attendance duly countersigned by the Police Station Officer, till commencement of the trial.

Needless to say that these are the observations of the Court while deciding the present pre-arrest bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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