

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

CRIMINAL APPLICATION (BA) NO. 857/2020

Swapnil Ajabrao Kharpe

-VERSUS-

State of Maharashtra.

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

Court's or Judge's Orders

Shri P. W. Mirza, Advocate for applicant.

Ms. S. S. Jachak, Advocate for non-applicant/State.

Shri M. P. Karia, Advocate for intervener.

CORAM : VINAY JOSHI, J.

DATE : 09.04. 2021.

Hearing was conducted through Video
Conferencing .

2. The applicant is arrested by Police Station – Bhatkuli, Dist. Amravati in Crime No. 17/2020 for the offence punishable under Sections 302, 307, 452, 427, 506 of the Indian Penal Code and Section 142 of the Mumbai Police Act. The applicant claims for regular bail. The State resisted bail by filing reply-affidavit.

3. It is the prosecution case that the applicant has assaulted to deceased Narayan by means of tractor liver i.e. iron road in which

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Narayan an old man succumbed to the injuries on the very day. Applicant's sister namely Shital got married with one Jagdish who was son of deceased Narayan. In other words, applicant allegedly committed murder of father-in-law of his sister – Shital.

4. The prosecution case as emerges from the report dated 06.02.2020 lodged by wife of deceased namely Chabu is that applicant used to visit their house. Deceased Narayan partitioned his landed property in to his four sons including Jagdish (husband of applicant's sister Shital). All the time, applicant used to visit informant's house and was quarreling with them at the instance of partition of agricultural land. On 06.02.2020, applicant initially went to the house of his sister Shital argued and beat her. Thereafter, he also twisted hands of the Sushma who was sister-in-law of Shital. Then applicant picked up tractor liver (iron road) and broke open the nearby house of deceased Narayan. When he entered into the house, deceased old aged person was on the bed. The applicant pulled him from the bed and dealt blows by means of iron road at his person. Other neighboring person have witnessed the incident and narrated accordingly in their Police statement. In-short, there are eye-witnesses to the incident

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who saw that applicant forcefully broke open the door, entered into house and beat deceased Narayan by means of iron road. On the day of occurrence, itself Narayan was declared dead.

5. It is argued that there is variance in the statement of eye-witnesses. Particularly, learned counsel for applicant took me through the statement of eye-witnesses namely Manisha Shrungare and Ramhari Shrungare who in their statement recorded by Magistrate under Section 164 of the Code of Criminal Procedure have denied that they have seen the occurrence. Learned counsel for applicant took me through the statement recorded under Section 164 of the Code of Criminal Procedure of witness Karuna to impress that she did not witness the incident and her statement is inconsistent with her earlier statement recorded by the Police in terms of Section 161 of the Code of Criminal Procedure. Pertinent to note that beside these witnesses, informant – Chabu as well as neighboring person Pawan are other eye-witness whose statement under Section 164 of the Code of Criminal Procedure were not recorded. There may be littler variance in the statement of some of the eye-witness but it is not the stage to make any comment or consider said aspect as yet evidence is to be recorded.

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6. Learned counsel for applicant has taken me through certain portion of the statement of eye-witness to show that according to them, deceased Narayan sustained injuries at his hand and neck. Contextually, he took me through the postmortem report to impress that the cause of death was about chest injury. On that basis, it is argued that none of the witnesses have stated that there was chest injury and therefore, medical evidence does not support to the ocular version. Pertinent to note that some of the eye-witness have stated that applicant beat deceased by means of iron rod. There may not be visible injury at the chest and therefore, these witnesses have not seen any surface wound at the chest, however Column No. 20 of the postmortem report discloses that there were multiple injuries at the chest of deceased. The cause of death is opined as “the cause of death is due to blunt trauma chest.” Pertinent to note that on the date of occurrence itself, old man died which speaks about severity of the blows at the vital part of the body.

7. Learned counsel for applicant would submit that at the relevant time, applicant had not carried any weapon but as per prosecution case, he had picked up tractor liver to assault deceased. In that context, he argued that the incident took place

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at the spur of moment and at the most, the alleged act would fall under the offence of culpable homicide not amounting to murder. True, the applicant had not carried any weapon with him, but he has dealt repeated blows at the person of the old man i.e. at his chest which caused his instant death. At this stage, it is not appropriate to opine whether the act of accused would attract the ingredient of the offence of murder or culpable homicide not amounting to murder.

8. The prosecution while resisting bail, has submitted that accused is history-sheeter who was externed from Amravati District for two year. Besides, externment order, he entered into Amravati District and committed a most serious offence of murder. The copy of the externment order passed under Section 56(1) of the Bombay Police Act dated 14.02.2019 along with crime chart has been produced. It is apparent that despite externment order from Amravati District, applicant entered in breach of order and had committed deadly assault on old man. The crime chart shows that various offences were registered against applicant and most of them are bodily offences. This circumstance has to be weighed while considering applicant's entitlement for bail. Learned counsel for applicant by placing reliance

on the decision of the Supreme Court in case of *Maulana Mohammed Amir Rashadi Vs. State of U.P. and another, 2012(2) Mh.L.J.(Cri.) 412*, made submission that merely on the basis of criminal antecedents, bail cannot be denied. True, antecedents cannot be sole ground for rejection of bail, but certainly, antecedents have to be considered along with other circumstances of the case. It reveals that applicant has total disregard to the rule of law. Despite externment from Amravati District, he entered into Amravati and committed serious offence. The crime chart shows that he was prone in committing bodily offences. Considering the history of applicant, there are high chances of tampering or pressuring the prosecution witnesses.

9. Having regard to the nature of accusation, seriousness of the offence, availability of eye-witnesses and antecedents of the accused, applicant does not deserve for bail. In the circumstances, application stands rejected.

JUDGE