

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

CRIMINAL APPLICATION (BA) NO. 10 OF 2022

Bharat Vishwansrao Lahudkar...Versus...State of Maharashtra and anr

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

Court's or Judge's orders

Mr. Anil Mardikar, Senior Counsel assisted by Mr. V.R.Deshpande, Advocate for the applicant.
Mr. Shamsi Haider, APP for Respondent /State
Mr. P.S.Wathore, Advocate for complainant

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/03/2022

Heard Mr. Anil Mardikar, Senior counsel assisted
by Mr. Ved Deshpande, learned counsel for the applicant.

2] The incidence for the offence under Sections 302, 307, 325, 143, 147, 148, 149, 504, 506 and 188 of the I.P.C. and Section 25 of the Arms Act and Section 135 of the Maharashtra Police Act is dated 8.4.2021. The applicant has surrendered on 30.8.2021. The charge-sheet has been filed on 26.11.2021.

3] Mr. Mardikar, learned senior counsel submits that in the FIR the applicant was not named and his name has been subsequently added. He further submits that the incidence had taken place as a scuffle and free for all between rival parties at the time of measurement of land bearing Khasra No.69, situated at Vakud, Tq. Khamgaon, Dist.

Buldhana, when the same was sought to be measured by the Revenue Authorities. He further submits that there is a counter complaint filed by one Mangesh Bhaskar Lahudkar, bearing FIR No. 0054, dt 10.4.2021 and all the accused in both the FIRs have been released except the present applicant. Further inviting my attention to the PM Report (pg. 243), he submits that column 17 does not indicate any fresh external injury and the cause of death has been given as “Cerebropulmonary Edema with Bilateral Lobar Pneumonia following Head Injury” (page 246). He further contends that though there is a recovery under Section 27 of the Indian Evidence Act from the applicant, there are no blood stains on the same. It is also contended that the injured Gajanan Wasudeo Lahudkar has not passed away immediately, but was admitted in the hospital some time in June, 2021 and has thereafter passed away and therefore, the cause of death cannot be related to the assault or the injury attributed to the applicant. Certain medical texts have been relied upon in support of this contention. He therefore submits that this is a fit case for the applicant to be released on bail.

4] Learned APP assisted by Mr. Wakode, learned counsel for the complainant opposes the application and submits that there is an old enmity between the rival parties, as a result of which when the agricultural field in dispute was being measured by the officials of the Revenue Department,

the applicant along with his supporters who were all armed with weapons, had assaulted the opposite party, who also are claimed to have been armed with iron pipes and rods and in the free for all ensuing, the applicant has assaulted the deceased on the head with a sword which has resulted in his demise on 21.9.2021. It is also contended that in so far as the opinion regarding the death as mentioned in the PM report is concerned, that is a matter of evidence and cannot be considered at the stage of considering the application for bail.

5] It is further stated that the sword has been recovered at the instance of the applicant. It is also contended that the applicant has criminal antecedents in as much as there are as many as 7 offences registered against him and therefore, the application be rejected.

6] The charge-sheet discloses that 8.4.2021 was the date fixed for causing the boundary measurement of Khasra No. 69, situated at Vakud, Tq. Khamgaon, Dist. Buldhana, by the officials of the Revenue Department. At 13.09 hrs when the measurement was concluded and the boundary marks as per the measurement were to be fixed, the applicant objected to the same and there was a quarrel between the applicant and his supporters on the one hand and Sopan Wasudeo Lahudkar on the other hand, which resulted into the melee and a free for all in which the applicant is claimed to have

assaulted the deceased on the head with a sword. The said incident has been witnessed by Ganesh Kailash Lahudkar, (pg 201), Nitin Gajanan Lahudkar (pg 202), Sopan Wasudeo Lahudkar (pg 203) Kailash Wasudeo Lahudkar (pg 204), Sanjay Haribhau Lahudkar (pg 205), Harshal Sopan Lahudkar (pg 206), Avinash Kailash Lahudkar (pg 207), Vijay Haribhau Lahudkar (pg 208), Rukhmabai Vishnudas Itkhede (pg 209), Nilesh Sadashivappa Rajmane (pg 211), Rahul Shankar Ingle (pg 212) and Shankar Ukharda Kharape (pg 213), all of them except Ashok Sukdeo Solanki speak about the applicant having assaulted the deceased on his head by a sword. Out of these witnesses, Rahul Shankar Ingle (pg 212) and Shankar Ukharda Kharape (pg 213) are the independent witnesses, who were present at the time of incident during the course of measurement of the said field. The sword by which the applicant has assaulted the deceased on his head has also been recovered from him on account of recovery under Section 27 of the Indian Evidence Act. There is admittedly an old enmity between the parties regarding the boundaries of the said field. Not only that, the applicant has criminal antecedents, as per the chart placed on record by the APP (page 472), in which though in the offence at Sr. No.7 Crime No. 22/2014, the applicant is claimed to have been acquitted, in so far as the other offences are concerned, some are stayed and some are going on. The fact that the victim did not pass away immediately, but was admitted in the

hospital on 13.6.2021 and passed away on 22.9.2021, as a result of the head injury, is a fact opined in the PM Report. The medical text relied upon to contend that in such cases the death is immediate, rather than after a considerable period of time, is something which will have to be tested on the touchstone of the evidence being laid and recorded during the course of the trial.

7] Though there is a counter FIR, the FIR in question was lodged on 10.4.2021 at 13.09 hrs, as against which the counter FIR was lodged on the same day, however at 15.38 hrs, which speaks in itself. True it is, as held in **Maulana Mohammed Amir Rashadi vrs. State of Uttr Pradesh and anr, (2012) 2 SCC 382** (para 10), that mere criminal antecedents cannot be a ground to reject the application for bail, however, in the instant case, considering that the charge-sheet indicates the prima facie involvement of the applicant, in the assault on the head of the deceased by a sword, I do not consider it an appropriate case to release the applicant on bail. The application is dismissed.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:08.03.2022 14:47