

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

CRIMINAL APPLICATION (BA) NO. 35 OF 2022

Vishwas Pandurang Sayawankar...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

Mr. Mahesh Rai, Advocate for the applicants
Mr. S.M.Ghodeswar, APP for respondent/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 16/02/2022

1] Heard Mr. Rai, learned counsel for the applicant
and Mr. Ghodeswar, learned APP for State.

2] The applicant is arrayed for the offence
punishable under Section 302 of the IPC in Crime No.
15/2020. The incident had happened on 24.1.2020 and
even though the charge-sheet has been filed on 16.3.2020,
the applicant continues to be behind bars.

3] Mr. Rai, learned counsel for the applicant
submits that though the assault by the applicant on the head
of his elder brother Deepak on the fateful day has resulted in
the death of Deepak, which was witnessed by his mother.
Even her statement would indicate that there was no
intention on part of the applicant to cause the death of the

deceased. He therefore submits that at the most the case would fall under Part-II of Section 304 of the IPC, in absence of the intention and considering that the applicant has been behind bars since 24.1.2020, which is nearly a period of more than two years, and though the charge-sheet has been filed on 16.3.2020 and the trial has not commenced, the applicant needs to be released on bail.

4] Learned APP opposes the application and submits that the question of intention would be a matter of trial and therefore, this cannot be the ground on which the applicant can be released on bail, as he has been instrumental in the demise of his elder brother, for which the mother herself is the eye-witness. He therefore submits that the application be rejected.

5] The factual position as spelt out from the record is that on 24.1.2020 when the deceased and the applicant after having their lunch were sitting in the front room, there ensued an altercation between them on account of some money matter, as a result of which the applicant in the heat of the moment appears to have gone to the neighboring welding shop, brought an iron pipe therefrom and assaulted the deceased on his head, as a result of which the deceased succumbed to the head injury. The applicant however did not run away, but was arrested from the spot by the police

authorities. The factum of there being a single blow and the factual position in which it was administered, may indicate that the matter may fall under Part-II of Section 304 of the IPC, however, this is merely a prima facie view for the purpose of dealing with the bail application and does not reflect in any manner upon the merits. The PM report also indicates one single blow to the head, which is the cause of the demise. Considering that the charge-sheet is already filed on 16.3.2020 and the trial has not commenced, and there is no possibility of the same in the near future on account of the backlog due to Covid, in the peculiar circumstances of the present matter, I feel that the further incarceration of the applicant would not serve any purpose. Hence the following order.

6] The application is allowed.

Applicant be released on bail for the offence punishable under Section 302 of the IPC in Crime No. 15/2020 on his executing PR bond in the sum of Rs. 50,000/- with two solvent sureties in the like amount.

The applicant shall not enter the jurisdiction of PS Dhanoli. Tq. Karanja, during the course of the trial.

The applicant shall not tamper with the prosecution evidence or try to influence the witnesses in any manner whatsoever.

The applicant shall attend each and every date

before the Sessions Court and shall ensure that the trial is not protracted on his count.

Any contravention of these conditions shall result in cancellation of bail.

JUDGE

Rvjalit