

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

CRIMINAL APPLICATION (BA) NO.246 OF 2022

Vijay s/o Parasram Rathod

Vs.

State of Maharashtra, Through its Police Station Officer, Police Station, Arni,
District Yavatmal

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

Court's or Judge's orders

Mr. R. R. Vyas, Advocate for applicant.
Mr. A. R. Chutke, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 18/04/2022

Heard Mr. Vyas, learned counsel for the applicant and Mr. Chutke, learned APP for non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, registered with Police Station Arni in Crime No.433 of 2021. The incident is dated 31.05.2021. The applicant has been arrested on 01.06.2021. The charge-sheet has been filed on 14.08.2021.

3. Mr. Vyas, learned counsel for the applicant submits that none of the eyewitnesses indicate the portion of the body on which the deceased was assaulted and mere statement that there was an assault by the

applicant to the deceased by way of stone would not be enough to indicate the allegation made against him. He further submits that the nature of injuries as per the Postmortem Report (page 105), would indicate that the injuries are attributed to the son of the applicant namely, Pavan Vijay Rathod, considering which, the applicant is entitled for bail.

4. Mr. Chutke, learned APP for non-applicant/State submits that though the eyewitnesses do not attribute any specific nature of assault, to the applicant, however, since the applicant was present on spot and is also claimed to have assaulted to the deceased, the application needs to be rejected.

5. The incident is dated 31.05.2021, on which date when the deceased and Sk. Sameer Sk. Chotu, were sitting on a otta, besides the shop of Ratanlal Jawaharlal Jaiswal at about 7.00 p.m. one Pavan Vijay Rathod (the son of the applicant) on his suspicion that the deceased was having affair with his sister, came to the spot and starting conversing with Vishal Ramrao Pendor (page 89), who was sitting alongwith the deceased, at which time, his hands were at his back, and suddenly during the course of conversation with said Pavan, brought out his hand which was holding a stone and assaulted the deceased on his head and neck, as a result of which, the deceased fell in the ditch adjacent to the otta,

whereupon, Pavan Rathod, also jump into the ditch and again assaulted him with the stone. At that time, the applicant is also stated to have come there and after the assault by Pavan, is also claimed to have assaulted the deceased. Similar is the statement of Avinash Jaiswal, who is claimed to be standing there. It is however, material to note that though both these eyewitnesses claimed that the applicant has come to the spot some time later, after the assault by Pavan, both of them, do not attribute any portion of the body on which any assault is claimed to have been made by the applicant. The Postmortem Report (pg 105) indicates that the cause of death is by head injury and para 17, indicates three wounds to the deceased on the head and neck, which considering the statement of Vishal Pendor and Avinash Jaiswal, as both of them stated that Pavan assaulted deceased three times on the head and neck, due to which, since no specific assault, has been attributed to the applicant more so on any part of the body by the aforesaid two witnesses, in my considered opinion, a case for bail is made out. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant be released on bail in Crime No.433 of 2021 registered with Police Station, Arni for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, on his executing PR. bond of Rs.50,000/- (Rupees Fifty thousand) with two solvent sureties of the like amount.

(iii) The applicant shall not, directly or indirectly make any attempt to influence the witnesses or otherwise tamper with the prosecution evidence.

(iv) The applicant shall not indulge into any criminal activity while on bail.

(v) The applicant shall remain present on each and every date before the learned Sessions Court during the course of trial and shall ensure that the trial is not protracted on his count.

(vi) Violation of any of these conditions shall result in cancellation of bail.

JUDGE

Sarkate