

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

CRIMINAL APPLICATION (BA) NO.751 OF 2022

Rajesh s/o Tarachand Marbate

Versus

State of Maharashtra, through P.S.O., P.S. Tirora, Tah. Tirora, Dist. Gondia

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

Court's or Judge's Order

Shri P.S.Wathore, Counsel for the applicant.

Ms Shamsi Haider, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 22/07/2022

1. The applicant is seeking bail in Crime No. 479 of 2021, registered with Police Station Tiroda, Tah. Tiroda, District: Gondia, for the offences punishable under Sections 307 and 302 of the Indian Penal Code, 1860.

2. Shri Wathore, learned counsel for the applicant submits that the applicant has been falsely implicated in the alleged offence.

3. He submits that if the First Information Report (FIR) is considered with the statements of witnesses, there are discrepancies about the number of blows given by the applicant.

4. He submits that the injuries found on the person of the deceased and the number of blows stated by the witnesses do not match. He, therefore, submits that all

this create doubt about the veracity of the allegations made in the FIR.

5. He submits that, the manner in which the recovery has been shown to be made, is itself creates doubt whether it is probable.

6. He further submits that, the applicant is in jail from last one year and he is the only bread earner of his family which is consisting of his parents, wife and three minor children. Accordingly, he prays for grant of bail.

7. On the other hand, Ms Shamsi Haider, learned APP opposes the present application and submits that considering the nature and seriousness of the offence and the severity of the punishment which conviction will entail, this is not a fit case for grant of bail.

8. The learned APP has drawn attention to the recovery memorandum under Section 27 of the Indian Evidence Act and the statement of witnesses. She, further states that any discrepancies as pointed out by the learned counsel for the applicant, is a matter of trial and at this stage as there is sufficient incriminating material available to *prima-facie* show the involvement of the applicant, she prays that bail may not be granted to the applicant.

9. I have perused the Charge-sheet and the FIR.

10. The discrepancies tried to point out by the applicant about the number of blows given by the applicant, is the matter of trial. However, at this stage it can be seen

that, *prima-facie*, there is sufficient incriminating material available against the applicant.

11. There are statements of eye-witnesses who have seen the applicant giving blow on the head of the deceased.

12. The deceased was 65 years old at the time of incident. The impact of the blow given on the head by the stick was so grave that the deceased died because of it.

13. The applicant and the witnesses are the residents of the same village. Thus, there is every possibility that if the applicant is released on bail, he may pressurize the prosecution witnesses.

14. Moreover, considering the nature and seriousness of the offences and the character of evidence collected by the prosecution, I am not inclined to grant bail to the applicant. Accordingly, I pass following order:

- a) The criminal application is **rejected**.
- b) Considering the fact that the applicant is the only bread earner of his family, learned trial Court is requested to expedite the trial.
- c) Liberty is granted to the applicant to move a fresh application, if there is no substantive progress in trial in next one and half years.

[ANIL S. KILOR, J.]