

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

CRIMINAL APPLICATION (BA) NO.774 OF 2022

Sunil S/o Pandurang Wadekar

Versus

State of Maharashtra, through P.S.O., P.S. Ramdaspath, Dist. Akola

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

Court's or Judge's Order

Shri A.M. Tirukh, Advocate for the applicant.

Shri S.A. Ashirgade, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 01/08/2022

1. The applicant is seeking bail in connection with Crime No.243 of 2021, dated 04.04.2021, registered with Police Station Ramdaspath, District: Akola, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code.

2. Shri Tirukh, learned counsel for the applicant submits that the whole case is based on last seen theory and there is no direct eye witness to the incident. He further submits that if the entry dated 04.04.2021 taken at 22.21 hrs. in the station diary is considered, it shows that the co-accused Amol Waghmare is responsible for cause of death. He has drawn attention to the post mortem report which supports the said entry. Accordingly, he submits that there is nothing to implicate the applicant in the alleged offence

more particularly, the offence under Section 302 of the Indian Penal Code.

3. It is submitted that the applicant is in jail from last 16 months and as the charge-sheet is filed, his further custody is not required. Accordingly, he prays for grant of bail.

4. On the other hand, Shri Ashirgade, learned APP opposes the present application and submits that as per the statement of one Sau. Pallavi Narendra Aadtia who is one of the witnesses, she has stated in her statement that she had seen the accused persons when they came in auto-rickshaw and out of them, one alighted from auto-rickshaw and tried to verify whether the deceased is alive or dead. She states that thrice the auto-rickshaw come and the accused verified the above referred fact and because she got suspicious about the act of the accused, she videographed the same in her mobile phone.

5. The learned APP further points out that there are witnesses who have seen the accused persons assaulting the deceased outside a liquor shop where they consumed liquor before the incident. He therefore, submits that there is sufficient material available on record to show the involvement of the applicant in the alleged offence.

6. I have perused the Case Diary and First Information Report (FIR).

7. The general diary details of Police Station Ramdaspath, Dist. Akola dated 04.04.2021 at 22.21 hrs. show that there was a quarrel between the deceased and the accused persons as the deceased was not returning new mobile phone of Amol Waghmare and therefore, the accused persons initially assaulted him and while they were going by auto-rickshaw, the deceased forcibly entered into the auto-rickshaw. Thereafter, again a quarrel took place and the deceased was thrown outside the auto-rickshaw. Thereupon, he fell down and after that the co-accused Amol Waghmare, took a big stone and hit on the chest of the deceased, because of which he died.

8. The post mortem report supports said story. The post mortem report shows that death caused because of acute cardiac tamonade due to hemopericardium due to rupture of right atrium of heart in case of assault.

9. If the cause of death is considered, *prima facie* it can be seen that Amol Waghmare is responsible for the death of the deceased. The incident of assault is prior to the incident when the co-accused Amol Waghmare hit the deceased by a stone on his chest. In the subsequent event which was resulted in death of the accused, no overt act is

attributed against the present applicant. Thus, *prima facie*, at this stage, I am of the opinion that there is nothing incriminating against the applicant to show that the applicant is responsible for the death of the deceased.

10. The applicant is in jail from last 16 months and considering the fact that the charge-sheet has already been filed and further that there is no likelihood that the trial would commence in near future, I am of the opinion that the applicant is entitled for grant of bail. In view of the judgment of the Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb*¹. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No.243 of 2021, registered with Police Station Ramdaspath, District: Akola, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, the applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

¹ (2021) 3 SCC 713

- c) The applicant shall not enter into the territorial jurisdiction Akola city, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address along with name of the nearest Police Station and shall attend the concerned Police Station on 1st and 16th of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- e) The applicant shall not tamper with the prosecution witnesses.

The criminal application is **disposed of** accordingly.

[ANIL S. KILOR, J.]