

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

CRIMINAL APPLICATION (BA) NO.1134 OF 2022

Shabbir s/o Gulab Pappuwale

Vs.

State of Maharashtra, through PSO Darwha, Dist. Yavatmal

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

Shri U.J. Deshpande, Advocate for applicant.
Shri S.M. Ghodeswar, APP for non-applicant.

CORAM : G.A. SANAP, J.

DATE : OCTOBER 11, 2022.

The applicant is arrested in Crime No.818/2021 registered at Police Station, Darwha, District Yavatmal for the offences punishable under Sections 302, 323 read with Section 34 of the Indian Penal Code.

2. The crime in question pertains to the custodial death of one Sheikh Irfan. It is the case of the prosecution that deceased Irfan, Amir Khan and Sheikh Golu were taken into custody by the police. They were brought to Darwha Police Station. It is alleged that in the police station they were mercilessly beaten by accused. Deceased Irfan sustained serious injuries and ultimately succumbed to the same. The cause of death is due to head injury.

3. In this application, it is the case of the applicant that he has nothing to do with the crime. He was the driver of the vehicle. He has not committed any crime. He has been falsely roped in this crime. He had no concern of whatsoever nature

with the investigation of the concerned crime. It is stated that therefore, in absence of any evidence, his incarceration is not necessary. The investigation is over and charge-sheet has been filed.

4. The application has been opposed on the ground that there is overwhelming evidence to establish connection of the applicant with the commission of the crime. He was involved in the incident of the assault and beating. He was responsible with the remaining accused for causing death of the deceased. It is further submitted that there is evidence to establish involvement of the applicant in the crime.

5. I have heard the learned Advocate for the applicant and learned Additional Public Prosecutor for the non-applicant/State. Perused the record and proceedings.

6. The death in question is admittedly a custodial death. The question is about the direct involvement of the applicant in the commission of the crime. It is undisputed that alongwith the deceased Irfan, Amir Khan and Sheikh Golu had been taken in custody by accused. It is the case of the prosecution that Amir Khan and Sheikh Golu are the eye witnesses to the incident. It is submitted that their statements are sufficient to make out a *prima facie* case against this applicant as well as other accused.

7. With the assistance of the learned Advocate and learned Additional Public Prosecutor, I have gone through the statements of the witnesses recorded on 08.07.2021. In my view, even if the case of the prosecution is accepted as it is, it would show that this applicant was not the investigating officer or directly or indirectly involved in the investigation or interrogation. He was the driver of the concerned Police vehicle. Perusal of the statements of these two witnesses would indicate that they were brought to the police station and in the police station, three people beat them. They have not stated their names. The material collected during the investigation would show that those three persons were the remaining three accused. The applicant, being the driver of the police vehicle, has stated that he was not concerned in any way with the investigation of the crime or interrogation. This fact has been stated by the main eye witnesses, on whom the prosecution has relied upon. The perusal of the statements would, *prima facie*, indicate that this applicant was not involved in the actual incident of beating to the deceased when he was brought to the police station. Later on statements of these two eye witnesses were recorded on 09.07.2021. Relying on these subsequent statements of the witnesses, the learned Judge formed the opinion that they have resiled from the earlier statements and which is indicative of the fact there this is direct attempt on the part of the accused to pressurize the witnesses and tamper with the prosecution evidence.

8. It is to be noted that the applicant being a driver of the vehicle has not been attributed any specific role in the incident of beating. The trial may take its own time. In the backdrop of the *prima facie* conclusion, which can be drawn on the basis of statements of two witnesses, the detention of the applicant would not be warranted. It is to be noted that the charge-sheet has been filed. This fact would indicate that for the purpose of any investigation or interrogation, the detention is not necessary.

9. The apprehension placed on record by the learned Additional Public Prosecutor with regard to the possibility of tampering with the prosecution evidence and threatening the prosecution witnesses can be taken care of by imposing appropriate conditions. In the facts and circumstances, in my view, subject to the appropriate conditions, the applicant deserves to be released on bail. Hence, I pass the following orders:

ORDER

- i. The criminal application is allowed.
- ii. The applicant – Shabbir s/o Gulab Pappuwale, be released on bail in connection with Crime No.818/2021 registered with Police Station, Darwha, District : Yavatmal on his furnishing PR bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

iii. The applicant shall not tamper with the prosecution evidence and he shall not threaten or pressurize the prosecution witnesses in any manner.

iv. The applicant shall attend the Police Station, Darwha, District Yavatmal on every Monday and Saturday between 03:00 pm and 07:00 pm, till completion of the trial.

With these, the application stands **disposed of**.

JUDGE

Wagh