

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

CRIMINAL APPLICATION (ABA) NO.893/2021

Baldev Shivaram Ingle Vs. 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. N. B. Jawade, Advocate for the Applicant.
Ms. T. H. Udeshi, A.P.P. for the Non-applicant/State.

CORAM : SURENDRA P. TAVADE, J.

RESERVED ON : 03/02/2022.

PRONOUNCED ON : 09/02/2022.

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. This is an application for pre-arrest bail in Crime No.958/2021 registered with Old City Police Station, Akola for the offence punishable under Section 302 of the Indian Penal Code. The informant – Nitesh Tayade is brother of deceased Vishwas. It is alleged that on 11.05.2021, deceased Vishwas had been to the house of the applicant. The applicant is husband of step maternal aunt of informant and deceased. There was a discussion among the deceased and the applicant over the marriage proposal of the daughter of the deceased. The applicant told deceased that he has marital dispute with his wife, therefore, there is no possibility of marriage of his daughter. Thereafter, there was altercation between the applicant and the deceased. After sometime the applicant

offered tea to deceased. The deceased had a tea and then he returned back to his house. In the same evening, the deceased started vomiting. Hence, he was taken to hospital. He was given medicines and discharged on 12.05.2021. The deceased had disclosed his mother that the applicant had given poisonous substance to him through tea. But the mother of deceased did not disclose the said fact to anybody. On 12.05.2021, the condition of deceased became deteriorated, therefore, he was admitted in the Ozon Hospital where he was treated till 16.05.2021. Thereafter, he was shifted to City Hospital where he was declared dead on 17.05.2021. It is alleged that the mother of informant disclosed him that the applicant administered poisonous substance to deceased, therefore, he passed away. Due to shock of death of Vishwas, his mother also passed away on 04.07.2021. It is contended that after the death of deceased, Police had carried out enquiry under Section 174 of the Code of Criminal Procedure. The viscera of deceased was sent to Chemical Analyzer wherein it was opined that the deceased died due to consumption of poisonous substance. Hence, the informant lodged the report. It is contended that the incident narrated in the First Information Report is false. It is contended that the deceased as well as the informant are members of Police Force. The alleged dying declaration of deceased is false. It is contended that the mother of deceased never disclosed the alleged dying declaration to anybody. It is contended that there is inordinate delay in lodging the First Information Report. It is contended that no *prima facie* case is made out against the applicant. The investigation is complete.

Therefore, it is prayed that the applicant be released on bail.

3. The prosecution has filed reply wherein the brief facts of the First Information Report are reiterated. It is contended that after the death of deceased Vishwas, Accidental Death Report was lodged on 17.05.2021. The enquiry into the death of Vishwas was carried out. It is contended that the medical evidence and forensic evidence clearly show that the offence of murder is made out. The statement of witnesses are recorded. The dying declaration made by the deceased to his mother is very crucial. The offence is serious in nature. Therefore, it is prayed that the application be rejected.

4. Heard the learned counsel for the applicant and the learned A.P.P. for the State. Perused the First Information Report.

5. It appears that the alleged incident of administration of poison to deceased was on 11.05.2021. He passed away on 17.05.2021. The deceased was in a position to speak till 14.05.2021, but he did not disclose the alleged act of applicant to anybody except his mother. It is also pertinent to note that the mother of deceased did not disclose the fact narrated by the deceased Vishwas to her to anybody till the death of Vishwas. Even after the death of Vishwas, his mother did not lodge report. Similarly, the informant has also did not take any step to lodge the First Information Report against the applicant.

6. It appears that the mother of informant died on

04.07.2021. The major piece of evidence is alleged oral dying declaration made by the deceased to his mother. But his mother did not lodge the First Information Report during her life time. The informant has lodged report on the basis of information given to him by his mother regarding the involvement of the applicant. The said material is nothing but hearsay information. The alleged incident had taken place on 11.05.2021. The First Information Report came to be filed on 28.11.2021. There is inordinate delay in lodging the First Information Report. The informant is member of Police Force. There is no explanation of delay in lodging the First Information Report. No doubt the enquiry under Section 174 of the Code of Criminal Procedure was carried out by the Police, but there is nothing on record whether the Enquiry Officer received the report of Chemical Analysis. Even if, the report of Chemical Analysis is taken as it is, there is no *prima facie* material that the applicant had administered poison to deceased. The investigation is already started and it is almost on the verge of completion. The applicant has attended the concerned Police Station as per the direction of this Court. Even he is under direction to attend the Police Station again to conclude the investigation, but the custodial interrogation of the applicant is not required. Hence, I pass the following order :

ORDER

- i] The application is allowed.
- ii] The interim order passed by this Court on 27.12.2021 is hereby confirmed with direction to attend the

concerned Police Station as and when required by the Investigating Officer.

- iii] The applicant shall not tamper with the evidence of prosecution witnesses in whatsoever manner.

(SURENDRA P. TAVADE, J.)

RGurnule