

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

CRIMINAL APPLICATION (BA) NO.35 OF 2023

Gaurav Ashok Chaudhari Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri M.N. Ali, Advocate for applicant.

Shri I.J. Damle, APP for non-applicant no.1/State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 08, 2023.

This is an application under Section 439 of the Code of Criminal Procedure.

2. The applicant has been arrested on 29.10.2021 in Crime No.206/2021 registered with Police Station, Ashti, District Wardha for the offence punishable under Sections 302, 326, 504, 506 read with Section 34 of the Indian Penal Code (for short, 'IPC').

3. Having heard both sides and having gone through the FIR, there are three accused namely; (1)Ashok Chaudhari, (2)Laxmi Chaudhari and (3)Gaurav Chaudhari (present applicant). The deceased is the real brother of accused no.1 – Ashok Chaudhari. The applicant is son of accused nos.1 and 2 and thus nephew of the deceased. It appears that there occurred quarrel and in turn physical assault at about 9.30 pm on 28.10.2021 between the applicant and his parents on one side and deceased on the other side. The accused no.2, mother

of the applicant had lodged FIR, which is first in time, blaming the deceased for the assault by wooden rafter on accused nos.1 and 2 . The FIR came to be registered against deceased vide Crime No.205/2021 for the offences punishable under Section 324, 504 and 506 of the IPC.

4. The wife of the deceased then registered present FIR against the applicant and his parents on 29.10.2021 at about 14:46 hours blaming them of assault by wooden sticks and german battens. Accordingly, FIR came be registered vide Crime No.206/2021 for the offences punishable under Section 326, 504, 506 read with Section 34 of the IPC. Thus, initially the offence under Section 302 was not registered.

5. Learned APP has drawn my attention to the dying declaration of the deceased. He stated that the incident occurred at about 9.30 pm on 28.10.2021. There occurred quarrel between deceased on one side and the applicant and his parents on the other side. The accused no.1 has assaulted him by german batten. The applicant and his mother brought wooden sticks from the house. They all have assaulted on the deceased on his legs and when he fell down, they assaulted on his back and the chest. The blood was oozing from his legs. However, there was no one to hospitalize him and that therefore he was lying on the road for the whole night in front of the his house . On the next day morning, the wife of the deceased removed him to the hospital. The deceased suffered fracture in his leg so also fracture in the ribs. The cause of

death is 'blunt trauma chest with bilateral tibia fracture'. Postmortem report indicates that there were 19 injuries. However, the medical certificate issued by the Village Hospital, Ashti, where the deceased was initially taken indicates that there are only 2 injuries.

6. Considering the nature of injuries and the fact that the applicant and his parents have were not armed with the weapon but have brought wooden sticks and german battens from the house, it appears that the assault was not predetermined. As stated earlier, there occurred quarrel between the applicant and the deceased. The deceased is said to have assaulted the parents of the applicant by means of wooden rafter, as against the applicant and his parents are said to have assaulted by means of wooden sticks and German battens. Both sides sustained injuries. Unfortunately, the injuries sustained by the deceased turned to be fatal. One may argue that the injuries were not fatal but turned fatal because the deceased did not get the treatment in time. He was lying on road in front of his house for the whole night. Had he been treated timely, in all probabilities, his life could have been saved.

7. The co-accused, the mother of the applicant has been released on bail. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence

against the applicant. The applicant is staying since long at the address given in the application.

8. In the circumstances and considering the peculiar facts of the case so also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view no fruitful purpose will be served by keeping the applicant behind bars. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

9. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

10. Resultantly, the following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant- Gaurav Ashok Chaudhari, be released on bail, in Crime No.206/2021 registered with Police Station, Ashti, District Wardha for the offence punishable under Sections 302, 326, 504, 506 read with Section 34 of the Indian Penal Code, on he furnishing P.R. Bond in the sum of ₹50,000/- with one or two sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

JUDGE

Wagh