

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

CRIMINAL APPLICATION (BA) NO.61 OF 2023

(Dixit s/o Bhagwan Janbandhu Vs. State of Maharashtra)

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

Court's or Judge's Order

Shri R.M. Daga, Advocate for the applicant.
Shri A.M. Kadukar, APP for State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 24, 2023.

Heard.

2. Present application is filed for grant of bail by the applicant under Section 439 of the Code of Criminal Procedure in connection with Crime No.901/2022 registered at police station Pachpaoli, Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. The applicant is arrested on 18/07/2022, since then he is in jail.

4. The crime is registered on the basis of report lodged by the brother of the deceased Aarif Ahmad Khan alleging therein that he himself and his mother were present in the house and they heard shouting and thereafter they came to know that the applicant has assaulted the deceased Asif. Therefore, informant and his mother rushed to the spot and saw that deceased Asif was

lying on the road and the applicant has pelted cement block on the head of the deceased, due to which he sustained injuries. Deceased was shifted to the hospital where he was declared dead. On the basis of report, police have registered the crime against the present applicant.

5. As per the contention of the present applicant that there was previous enmity also and previously the applicant has filed the First Information Report against the deceased as well as deceased has also filed the FIR against the present applicant. During trial, they both have settled the dispute. In the result, both the cases resulted into acquittal. Thereafter on 18/07/2022, the deceased who was under the influence of liquor, came in front of the house of the present applicant, started abusing him. Therefore, applicant got annoyed and pelted stone towards him. In the said incident, deceased sustained the grievous injuries and succumbed to the death.

6. It is the contention of the present applicant that the alleged incident has taken place as the deceased has provoked the present applicant and in the heat of said rage, he has assaulted the deceased. At the most the case covers under Section 304(II) of the Indian Penal Code. Now, investigation is completed and charge-sheet is filed. Further custodial interrogation of the present applicant is not required and hence he be released on bail.

7. Said application is strongly opposed by the State on the ground that there was a previous enmity between the present applicant and the deceased. Due to the said enmity with intention to commit murder of the deceased, the deceased was assaulted. There is sufficient material showing the involvement of the present applicant in the commission of the crime and hence bail application deserves to be rejected.

8. Heard learned Counsel for the applicant. He reiterated the contention and invited my attention towards the judgments in earlier crimes which are registered against the present applicant on the basis of report lodged by the deceased and the crime in respect of the report filed by the present applicant against the deceased. On perusal of the judgment, it reveals that the previous disputes were amicably settled by the deceased and the present applicant, and therefore, the trial Court has recorded the acquittal of the present applicant as well as the deceased.

9. As far as the alleged incident is concerned, it is apparent from the investigation papers that on 18/07/2022 at about 9:30 the deceased came in front of the house of the present applicant and started abusing him. The applicant got annoyed, came out of the house and pelted stone towards the deceased in which he has sustained the injuries and succumbed to the death. The spot-panchnama also shows that alleged spot of incident is

also in front of the house of the present applicant. During investigation the statements of the eye-witnesses are also recorded including the statement of Shubham Yadavrao Choudhary and Nasim @ Banne @ Iqbal @ Haku Maliq. From their statements also it reveals that it was the deceased who was the aggressor came in front of the shop of the present applicant and abused him, and therefore, present applicant got annoyed and assaulted him by means of stones. Though the eye-witness Nasim has stated in 164 statement that the present applicant was also carrying the knife at the relevant time but the statement of the eye-witnesses Shubham Choudhary and earlier statement of the said Nasim nowhere discloses that present applicant was carrying knife at the relevant time. The injuries sustained by the deceased as per the postmortem report are in the nature of contusion and lacerated wound. The injury No.1 in Column No.17 shows that one injury is sustained by the deceased on his frontal region of forehead of size 8 x 6 reddish in colour. Rest of the injuries are on the nose, on the right eyebrow, upper lip and chin. So only one injury which is injury No.1 is proved to be fatal as it is also corresponded by the internal injuries.

10. Learned Counsel for the applicant placed reliance on *Ajmal Vs. State of Kerala [(2022) 9 SCC 766]* wherein the Hon'ble Apex Court has considered the fact that there was absence of premeditation. Incident of assault by means of sticks and a brick, resulting in one

death and three injured, proved by prompt FIR, recovery of weapons, ocular and medical evidence. Considering entire materials on record, incident, held, occurred without premeditation of mind. Admittedly, whether case covers under Section 304 Part I i.e. culpable homicide amounting to murder or whether it covers under Section 304 culpable homicide amounting to murder is a matter of evidence. At this stage, from the investigation papers, it reveals that admittedly there was no premeditation. The alleged incident has taken place as the deceased came in front of the house of the present applicant and abused him, and therefore, the applicant got annoyed and caused injury to the deceased by means of stone and bricks. Now investigation is completed and charge-sheet is filed. Considering the circumstances in which the alleged incident has taken place, at this stage it is apparent that there was no intention however, in a heat of passion the alleged incident has taken place and the death of the deceased is caused.

11. Considering the same and as the applicant is already for a sufficient period behind the bar. No purpose will be served by keeping him behind bar as trial will take its own time for its final disposal. The application deserves to be allowed by imposing certain conditions.

12. In the result, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Dixit s/o Bhagwan Janbandhu in connection with Crime No.901/2022 registered at police station Pachpaoli, Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Pachpaoli police station, Nagpur.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*