

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

...

CRIMINAL APPLICATION (BA) NO. 249/2023

Prafulla Vishnu Adhau

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Mangrul Dastgir Tq.Dhamangaon

Railway Dist.Amravati

.. Respondent

.....
Mr. S.B.Trivedi, Advocate for the applicant

Mr.S.S Doifode, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 30th March, 2023.

PC:

Heard both sides.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 15.11.2021 in Crime No. 342/2021 registered at Police Station Mangrul Dastgir Tq. Dhamangaon Rly, Dist. Amravati, for the offences punishable under Section 302 of the Indian Penal Code.

3. An unfortunate incident is put forth before this Court. The statement of the mother, the sole witness, indicates that her two sons have initially quarrelled and thereafter one of the sons assaulted the another on his head by means of wooden bat. Resultantly, she lost one son and another is behind bars.

4. The statement of the mother indicates that the applicant was sitting in the room. His younger brother Rahul (deceased) entered the room in an inebriated condition. Rahul asked his mother for dinner

to which the mother said that she is preparing the food and the same will be served once it is ready. In a rage, Rahul assaulted his mother by catching her neck. The applicant had a spontaneous reaction upon seeing her mother being assaulted and, therefore, asked Rahul as to why is he assaulting their mother. Rahul abused the applicant, upon which the applicant took out a bat kept in the house and hit on his head. Blood was oozing from his head. Despite this, Rahul continued to abuse filthily and went out on road. Rahul then assaulted the applicant by pelting stones at him. The applicant sustained injury on his hand and getting further provoked, ran behind Rahul and made a further assault on his head by means of wooden bat. This has resulted into death of Rahul.

5. The learned counsel for the applicant submits that the evidence cannot be said to be sufficient to book the applicant u/s 302 of the IPC and, at the most, the case would fall under assault out of sudden provocation and will attract the ingredients of Section 304 of the IPC.

6. The learned APP has opposed the application on the ground that the accused has committed serious offence.

7. True it is that the accusation is serious but then if a mother of a person is assaulted even by the brother, another son is bound to be provoked and spontaneous reaction would certainly be to retaliate, which appears to be the present case. The assault cannot be said to be a predetermined assault inasmuch as, in a spur of a moment and anger, the applicant has assaulted Rahul. Further the assault is also provoked by Rahul because he has pelted stones at the applicant by which the applicant sustained injuries on his hands.

8. In the circumstances considering the fact that the applicant is not a habitual offender, has no antecedents reported against him and that he has been provoked to take wooden bat in his hand and further that he has not fled from the spot and further that there cannot be any reason for the applicant to commit murder of his own brother, the severity of the offence will be reduced from intentional assault to provoked assault and accordingly the allegations will have to be scrutinized.

9. The charge-sheet has been filed. The charge has not yet been framed. It will take some time to commence and conclude the trial. The applicant is residing at the given address since long.

10. In the circumstances and considering the peculiar facts of the case, as 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.

11. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

12. Hence, the following order :

ORDER

(i) The Application is allowed.

(ii) The applicant- Prafulla Vishnu Adhau, be released on bail, in Crime No. 342/2021 registered at Police Station Mangrul Dastgir Tq. Dhamangaon Rly, Dist., Amravati, for the offences punishable under Sections 302 of the Indian Penal Code, on he furnishing P.R. bond in

the sum of Rs. 50,000/- (Rupees fifty thousand) 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 mobile number(s) and the residence 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 from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) The applicant shall surrender his passport before the Investigating Officer within a period of one week from today. If he does not possess any passport, he shall file an affidavit to that effect.

(viii) In case of breach of any condition, 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.

[ANIL L. PANSARE, J.]

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