

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

CRIMINAL APPLICATION (BA) NO.268 OF 2023
Sameer S/o Motilal Hande 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 S.W. Sambre, Advocate for applicant.
Shri S.M. Ghodeswar, APP for non-applicant/State

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 6, 2023.

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

2. The applicant has been arrested on 24.09.2022 in Crime No.641/2022 registered with Police Station, Seloo, District Wardha for the offence punishable under Section 302 of the Indian Penal Code (for short, 'IPC').

3. Having heard both sides and having gone through the material placed before me, it appears that the incident has occurred at about 17:30 hours on 23.09.2022. Two FIRs came to be registered on the basis of the incident. It appears that two groups indulged into the altercation and thereafter serious fight, that resulted into assault against each other. Both the groups suffered injuries, the injury sustained by the applicant and the informant's friend were grave. The applicant's finger got amputated. As against, the informant's friend Nilesh Laxman Rajurkar suffered fatal injury. The statement of

witnesses have been recorded, of which the statement of independent witnesses would attain significance in view of the rival contentions.

4. With the able assistance of both sides I have gone through the statement of independent witnesses, which narrates incident as follow:

One of such witnesses is Luv Ramaji Parse. He states that he runs '*Chivda*' Shop. On 23.09.2022 at 01:00 pm, he and his mother opened the shop. Three to four four-wheeler arrived near his shop. One four-wheeler was parked on the road in front of his shop. Ten persons alighted from the vehicles. They prepared food by the side of the road and had their lunch. Thereafter, some of them were playing and some of them were taking bath and others were talking to each other. At about 05:30 pm, a white four-wheeler came with four persons. That was stopped behind the vehicle parked in front of his shop. Driver of the vehicle (applicant) sounded horn and asked persons sitting nearby to remove vehicle parked on the road. The applicant thereafter made an attempt to proceed on the road by the side of the parked vehicle. To avoid damage to the side mirror of the parked vehicle, he closed the side mirror. The persons playing nearby asked the applicant as to why did he touch their vehicle. On that count, there occurred quarrel between two groups. The applicant assaulted the deceased on chest by means by knife. The injured fell-down and applicant left the place. Thereafter, he was removed to the hospital,

where he was declared dead. The informant and some of the persons belonging to the informant's group caused damage to the vehicle of the applicant. At that time, the applicant came to the shop of the witness and sat by the side of the table and informed the mother of the witness that his finger got amputated. The witness and his mother got frightened and left the place.

5. A little different story is narrated by one Vijay Chafle, who was accompanying the applicant in his car. His statement indicates that there occurred quarrel between two groups on the point of applicant closing mirror of the vehicle parked on the road. The applicant alighted the car and proceeded to talk to the persons of informant's group. At that time, they assaulted applicant by holding his collar. Friends of applicant got down to pacify the quarrel, however they were also beaten and therefore they left the spot. One of the persons of informant's group picked-up stone and broken rear glass of the applicant's vehicle. The friends of the applicant returned back after 10 minutes. They saw that the applicant was sitting injured in his vehicle on rear seat. He was taken to hospital.

6. In the aforesaid background, the learned counsel for the applicant submits that the informant's group is the one who has taken initiative in this assault. The applicant was beaten by them. He further submit, without prejudice, that the applicant was provoked to commit the crime and that one of the defence would be that he has done so for self-protection. He further

submits that there are no criminal antecedence, nothing is to be recovered from the applicant and therefore prayed for the relief.

7. As against, learned APP submits that the allegations are serious. There is absolutely no reason why should applicant assault the deceased with knife. He could have adopted other measures to save himself from the attack. Accordingly, prayed for rejection of bail.

8. What transpires from above is that the basic reason for the quarrel is parking vehicle on the road. The applicant attempted to take his vehicle by the side and in doing so closed mirror to avoid the damage, the attempt cannot be faulted with. The applicant alighted the vehicle and approached informant as they asked how did he touch their vehicle. Thereafter, altercation occurred that resulted into assault upon each other. Both groups sustained injuries. Unfortunately one of the members of informant's group suffered fatal blow at the hands of the applicant.

9. It indeed appears that the incident has occurred on provocation and at the spur of the moment. However, the aforesaid fact and whether the applicant committed crime to save himself, is a matter of trial. The fact, however, remains that the assault was not predetermined. Further, the weapon has been recovered and that nothing is to be recovered from or at the instance of the applicant. There are no criminal antecedence against the applicant. The applicant is 35 years

old. When enquired, learned counsel for the applicant submits that applicant was working as a Labourer on contract basis with MSEB. He has to take care of his parents as also his wife. He is the only bread winner in the family. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial.

10. In view of the above and considering the peculiar facts and circumstances of the case and considering the fact that the applicant being only bread winner in the family 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.

11. The observations made in this order are *prima facie* and are made for deciding the present application only. The learned trial Court shall not get influenced by the above observations.

12. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Sameer S/o Motilal Hande, be released on bail, in Crime No.641/2022 registered with Police Station, Seloo, District Wardha for the offence punishable under

Section 302 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 in time. 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

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