

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

CRIMINAL APPLICATION (BA) NO. 272 OF 2023

Tushar Dhanraj Verma

..VS..

State of Maharashtra through PSO, P.S. Yashodhara Nagar, Nagpur

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

Court's or Judge's orders

Mr. D.V. Chauhan, Advocate for applicant.
Mr. S.M. Ghodeswar, Additional Public Prosecutor for
non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 15, 2023

Present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.481/2021, registered with Police Station Yashodhara Nagar, Nagpur initially registered under Section 307, 504 read with Section 34 of the Indian Penal Code and subsequently converted under Section 302 of the Indian Penal Code.

2. The applicant is arrested on 21.07.2021 and since then he is in jail.

3. The crime is registered on the basis of report lodged by Mangesh Ramkrushna Dhakate brother of the deceased on 20.07.2021, on an allegations that the deceased is his brother. On 19.07.2021 at about 09.30 pm. his brother Atul Ramkrushna Dhakate was

standing in front of Shourya Fitness Gym, at the relevant time, Manish Shahu along with present applicant and other two-three persons came there and due to the previous quarrel between them gave a blow of knife on the abdomen portion of his brother and other accused also assaulted him and fled away from the spot of incident. Due to assault, the deceased sustained grievous injuries and admitted in the hospital. He further narrated while lodging the report that alleged incident was narrated to him by his injured brother. On the basis of said report police have registered the crime against the present applicant.

4. As per the contention of the present applicant, merely because he is the friend of the co-accused, his name is implicated in the alleged offence, in fact he was not at all present the time of alleged incident. It is further contention of the applicant that after going through the investigation papers, inconsistent statements are given by the witnesses and none of the witness is saying that the applicant has assaulted the deceased by means of knife. Since 21.07.2021 he is in jail, now investigation is completed, charge-sheet is filed and further custody of the present applicant is not required. He will abide by the all conditions imposed by this Court and hence he be released on bail.

5. Said application is strongly opposed by the State on the ground that the statements of the various

witnesses to whom the deceased has made a disclosure statement shows the involvement of the present applicant in the alleged offence. The statement of the eye witness also discloses the involvement of the present applicant in the alleged offence. If the applicant/accused is released on bail, he will tamper the prosecution witnesses and will not be available for trial and prayed for rejection of the application.

6. Heard learned counsel Mr. D.V. Chauhan, learned counsel for the applicant. He invited my attention towards recitals of the First Information Report (FIR) as well as various statements specifically statement of the father of deceased, wife of the deceased and the eye witness – Dinesh Deochand Narbariya and submitted that all these statements are inconsistent with each other. The eye witness now has stated that the present applicant has assaulted the deceased by means of knife. In fact, his statement nowhere shows that deceased was assaulted by using the knife. He further invited my attention towards one letter addressed to the Medical Officer wherein the Medical Officer has endorsed after the admission of the injured in the hospital on 19.07.2021 itself at about 10.40 pm. that patient is unfit to give statement. He further submitted that if this endorsement is taken into consideration, it is highly impossible and improbable that the deceased could have narrated the incident to the informant. Thus considering the nature of the material collected by the Investigating Officer absolutely, there is

no evidence to show that present applicant has assaulted the deceased. Considering that investigation is completed and since from last two years the applicant is in jail, his further custody will not serve any purpose hence he be released on bail. The applicant will abide by all conditions imposed by this Court.

7. Learned APP vehemently submitted that considering the *prima facie* material is against the present applicant to connect the present applicant with the alleged offence, the application deserves to be rejected. At the same time he fairly submitted that none of the witness has stating that the present applicant has assaulted the deceased by means of knife.

8. Having heard both the sides and on perusal of the investigation papers, it is apparent that the crime is registered on the basis of report lodged by the brother of the deceased. If the recitals of the FIR is taken into consideration, the only allegation against the present applicant is that all the accused assaulted the deceased. There is no allegation that the present applicant was holding the knife and gave blow of knife to the deceased. Moreover, the disclosure statement to the informant by the deceased is to be taken in to consideration, in the light of the endorsement given by the Medical Officer on the letter dated 19.07.2021, the endorsement shows that at about 10.40 pm. on 19.07.2021, the Medical Officer has endorsed that the patient has unfit to give statement.

As per the recitals of the FIR, the informant had been to the hospital and deceased made a disclosure statement. If these two facts are taken into consideration, the contention narrated by the informant in the FIR appears to be improbable. During investigation, the Investigating Officer has also recorded the relevant statements of the witnesses including the statement of the father to whom the injured met and narrated about the incident. As per the statement of the father, the deceased disclose to him that he was assaulted by Manish and thereafter one composite statement is that he has also assaulted by Manish and other accused persons. The statement of the eye witness Dinesh Deochand Narbariya has nowhere stated that present applicant was holding any knife in his hand and assaulted the deceased. In fact, as per the statement of the eye witness, all the accused assaulted the deceased by means of fist and kick blows. I have also perused the Postmortem Report. The injuries mentioned in the Postmortem Report shows that deceased has sustained in all eleven injuries and death of the deceased is caused due to the injury on vital structures.

9. After considering the material on record and the allegations which made against the present applicant, none of the witness assigning the role at present applicant assaulted the deceased by means of knife. Now, investigation is already completed and charge-sheet is filed. The present applicant is in jail since last two years. After perusing the investigation papers and

material collected during the investigation and taking into consideration that there is no allegations against the present applicant that he was holding any weapon and assaulted the deceased by means of weapon, the applicant has made out the case to grant him bail. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Tushar Dhanraj Verma in connection with Crime No.481/2021, registered with Police Station Yashodhara Nagar, Nagpur is released on bail on executing P.R. bond of Rs.30,000/- with one solvent surety of the like amount.
- (iii) The applicant shall not leave the jurisdiction of Yashodhara Nagar Police Station.
- (iv) The applicant shall attend the Yashodhara Nagar Police Station on every Monday between 10.00 am. to 01.00 pm. till conclusion of trial.
- (v) The applicant shall not induce, pressurize and threaten any witness who connected with the alleged crime and he shall not contact the witnesses in any manner.
- (v) The applicant shall furnish his cellphone number and address with the address proof and additionally he shall furnish name of his two

relatives along with their address-proof before the Court.

10. The application is disposed of.

CRIMINAL APPLICATION (APPP) NO. 504/2023

In view of disposal of the bail application, this application does not survive and hence it is disposed of.

(URMILA JOSHI-PHALKE, J.)

Kirtak