

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

CRIMINAL APPLICATION (BA) NO. 326/2023

Praful Arunrao Wakode And Another
Vs
State Of Maharashtra, Thr. Senior Inspector Of Police, Chandur Bazar,
Dist. Amravati

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

Court's or Judge's Order

Mr A.P.Thakre, advocate for the applicants.

Mr I.J.Damle, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/06/2023.

1. Heard.
2. The present application is filed by the applicants for grant of bail in connection with the Crime No. 304/2022 registered with the Police Station Chandur Bazar, District-Amravati (Rural) for the offences punishable under Sections 452, 323, 294, 302, 506 read with Section 34 of the Indian Penal Code.
3. The applicants/accused are arrested on 09/05/2022 and since then they are in jail. The crime was registered on the basis of the report lodged by one Rakhee Prashant Pandey, who is the daughter of deceased Devanand Wakode. As per her allegation, her father Devanand Wakode was in habit of drinking liquor. On 05/05/2022 at about 5.00 p.m. she made a phone call to her mother and

her mother disclosed that on 05/05/2022 at about 4.00 p.m. when her father came home under the influence of liquor and was quarreling with her. By hearing the noise of their quarrel, the applicant who is cousin uncle of the informant along with one Pawan Wakode entered in her house and assaulted her father by fist and kick blows. They have also abused him and threatened him that repeatedly he is raising quarrel in the house and giving abuse, they will commit his murder. Due to assault, the deceased had abdominal pain and therefore, he was moved to hospital. During his admission in the Irwin Hospital, the Medical Officer of the Irwin Hospital suggested to shift him at Medical Hospital, Nagpur. Therefore, the deceased was moved to the Medical Hospital at Nagpur, however he succumbed to the death. Initially, the crime was registered under Sections 323, 452, 294, 302, 506 read with Section 34 of the Indian Penal Code. After death of the deceased it was converted under Section 302 of the Indian Penal Code.

4. As per the contention of the applicants that there was no intention and motive to commit the murder of the deceased. Whatever happened, is in a sudden fight and sudden quarrel. Therefore, the alleged Act covers under culpable homicide not amounting to murder under the exception i.e. culpable homicide not amounting to murder. The applicant has not taken any disadvantage of the circumstances not used any weapon. Now, the investigation

is completed and charge-sheet is filed, further custody of the applicants is not required other co-accused are already released on bail. The applicants are in jail since last one year. There is no possibility of concluding the trial in the near future, therefore, the applicant be released on bail. The applicant will abide by all the conditions imposed by this Court.

5. The said application is strongly opposed by the State on the ground that the statements of the witnesses sufficiently shows that the applicant has taken undue advantage of the circumstances and gave repeated blows. The intention and motive of the applicants is to be gathered from the surrounding circumstances. The PM Report shows that the death of the deceased is caused due to injury sustained by him on abdominal portion. The Medical Officer further opined that the injury over the scrotum is sufficient to cause death. The cause of death determined by the Medical Officer is “complications following blunt trauma over abdomen and blunt trauma over scrotum”.

6. The learned APP further submitted that if the applicants/accused are released on bail, there is every possibility that he will tamper the witnesses and will not be available for trial and trial will be held-up. Hence, the application deserves to be rejected.

7. Heard learned counsel Mr A.P. Thakre, for the applicant. He reiterated the contentions as raised in the application. Additionally, he submitted that even the case of the prosecution is accepted as it is, the applicant has not used any weapon. The alleged incident has happened in a sudden fight and sudden quarrel. The applicant has not taken any undue advantage of the circumstances. As the deceased was addicted to bad vices like drinking liquor, his physical condition was weak. The death might have caused due to complications due to his bad habit of drinking liquor. There was no intention and no knowledge to cause death of the deceased. Now, the investigation is completed and charge-sheet is filed. The other co-accused are already released on bail. There is nobody to look after the family affairs of the applicants. Therefore, they be released on bail. They will abide by all the conditions imposed by this Court and will remain present for the purpose of the trial.

8. Per contra, the learned APP submitted that the statements of the witnesses sufficiently shows that there was intention as well as knowledge that the act of the accused would result into the death of the deceased. Therefore, the case of the applicant is covered under the culpable homicide amounting to murder. He further submitted that the injury mentioned over the scrotum is sufficient to cause death and death of the deceased is caused due to blunt trauma over abdomen and blunt trauma over scrotum. Now, the

investigation is completed and charge-sheet is filed, the trial can be expedited. If the applicants/accused are released on bail, he will tamper with the prosecution witnesses and hence, application deserves to be rejected.

9. Heard both the sides. Perused the investigation papers. The crime was registered on the basis of report lodged by the daughter of the deceased. Admittedly, she is not the eye witness of the incident. She received information from her mother. As per the allegation, on 05/05/2022 about 4.00 p.m. her father returned home under the influence of liquor and there was quarrell between the deceased and his wife. The deceased was abusing his wife, at the relevant time, the applicants and other co-accused entered into the house and assaulted the deceased by fist and blows. After the assault, the deceased complained about the abdominal pain and therefore, he was moved to the hospital, thereafter, he shifted to the Medical Hospital, Nagpur but he succumbed to the death on 07/05/2022.

10. During the investigation, the Investigating Officer has recorded the relevant statement of the witnesses. The wife of the deceased is the eye witness of the said incident. From her statement, it reveals that deceased was assaulted by the present applicants and other co-accused and repeated blows by fist and kick blows were given. From her statement, it further reveals that, though she attempted to

restrain the present applicants from assaulting the deceased, the present applicants have pushed her aside and repeatedly gave fist and kick blows to the deceased, which subsequently resulted into the death of the deceased.

11. Learned counsel vehemently submitted that the case of the present applicants covers under the culpable homicide not amounting to murder, as exception No.4, sudden fight and sudden quarrel comes into play. There was no intention and motive to commit the offence. Admittedly, the intention of the person inner compartment of his mind and it can be gathered from the surrounding circumstances.

12. At this stage, the statement of the witnesses who have witnessed the alleged incident are to be taken into consideration. From the said statements it reveals that the applicants though restrained by wife of the deceased gave repeated blows to the deceased which resulted into grievous injury. The deceased was shifted to hospital. He had sustained nine injuries on his abdominal portion. The internal injury sustained by the deceased also shows that small intestine shows percolation of size 01 c.m. x 0.5 cm. The Medical Officer specifically opined that the injury mentioned in column No. 21 and injury mentioned over scrotum is sufficient to cause death. Whether the case of the applicants covers under exception-4 or not is matter of trial.

13. At this stage, prima-facie material on record sufficiently shows that the involvement of the present applicants with the alleged offence. The contention of the learned counsel that all witness are interested witnesses is also not sustainable because it is now well settled that mere witness is related to the deceased is not sufficient to term him as an interested witness. The investigation is now already completed, charge-sheet is filed and trial can be expedited. Considering the prima-facie material against the present applicants, the case is not made out for the grant of bail to the present applicants.

14. In view of the above reasons recorded, the criminal application deserves to be **rejected**.

15. The learned trial Court shall expedite the trial, if the trial is not concluded within one year, the applicants are at liberty to file fresh bail application in change in circumstances.

Criminal Application is **disposed of**.

JUDGE