

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

CRIMINAL APPLICATION (BA) NO. 405/2023

ASHOK GANPAT CHAUDHARI

VS

STATE OF MAH. THR. PSO, PS ASHTI, TQ ASHTI, DIST. WARDHA.

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

Court's or Judge's Order

Mr. M.N.Ali, counsel for applicant.

Mr. .I.J.Damle, APP for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/07/2023.

1. Heard.
2. The present application is preferred by the applicant for grant of anticipatory bail in connection with Crime No. 206/2021 registered with Police Station Ashti, District Wardha for the offences punishable under Sections 302, 326, 504, 506 read with Section 34 of the Indian Penal, 1860.
3. The accusation against the present applicant is on the basis of a report lodged by the wife of the deceased namely Mala Subhash Chaudhari, wherein she has alleged that on 28/10/2021 at about 9.30 p.m. when she was in the kitchen, she heard the noise of a quarrel, she came out of the house and saw that there is a quarrel between the present applicant and the

deceased. The present applicant along with other co-accused assaulted the deceased by means of German Bottom as the co-accused assaulted him by means of a wooden stick. Due to the assault, the deceased has sustained grievous injuries, immediately he was shifted the hospital. However, during the treatment, he succumbed to the death.

4. As per the contention of the present applicant initially crime was registered under Section 326 of the Indian Penal Code. The only allegation against the present applicant is that he assaulted the deceased by means of German Bottom on his leg. Thus the injuries were not sustained by the deceased on the vital part of the body. It is further contention of the applicant that a general allegation is made against the present applicant. Now, the investigation is completed and charge-sheet is filed. Further custody of the present applicant is not required. The other co-accused are already released on bail. No purpose will be served by keeping the present applicant behind the bar.

5. The said application is strongly opposed by the State on the ground that there is prima-facie material against the present applicant. The deceased sustained grievous injuries on the vital part like the chest which resulted into his death. Considering the prima-facie

material against him, the criminal application deserves to be rejected.

6. Heard Mr M.N. Ali, learned counsel for the applicant. He reiterated the contentions and submitted that considering the role of the present applicant, the weapon assigned to him is German Bottom and the injuries sustained by the deceased, due to assault at the hands of the present applicant is on the legs. The other co-accused are already released on bail. He also invited attention towards the observation of this Court while releasing the co-accused on bail. It is observed by this Court that initially when the deceased was referred to Rural Hospital, only two injuries were found on the person. Whereas in the post mortem report 19 injuries are mentioned in column No. 17. Out of those 19 injuries, there are six injuries, due to surgical intervention which even if ignored, there is prima-facie discrepancies in the injury report and injury shown in the post-mortem report.

7. He submitted that in view of the said observation and the view taken by this Court while releasing the co-accused on bail, the present applicant is also entitled to be released on bail.

8. Per contra, learned APP vehemently submitted that the statement of the deceased which is to be

treated as dying declaration shows that the present applicant has assaulted the deceased on his chest and the death of the deceased is due to injury on his chest. Thus, the present applicant has chosen the vital part to assault him. Considering the gravity of the offence, criminal application deserves to be rejected.

9. Having heard both the sides and on perusal of the investigation papers, it reveals from the recitals of the FIR that the allegation against the present applicant is that by means of German Bottom, he has assaulted the deceased on his legs. The eye witness Suresh Chaudhari has also narrated the role of the present applicant as assaulted by him on the legs of the deceased. The dying declaration of the deceased shows the general allegations against the present applicant. As per the allegation in the statement of eye witness, it was son of the present applicant who has assaulted the deceased on his chest. The similar role is assigned to the co-accused who are already released on bail. Considering the fact that the co-accused who are assigned with similar role, are already released on bail. The present applicant is also entitled to release on bail on the ground of parity.

10. Considering that the investigation is already completed charge-sheet is filed, no purpose will be

served by keeping the present applicant behind bar. I am of the opinion that the applicant is released on bail. Accordingly, I pass the following order:

- a) The Criminal Application is allowed.
- b) The applicant in connection with Crime No. 206/2021 registered with Police Station Ashti, District Wardha for the offences punishable under Sections 302, 326, 504, 506 read with Section 34 of the Indian Penal, 1860 is released on bail on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.
- b) The applicant shall attend the concerned Police Station till conclusion of trial.
- c) The applicant shall not induce in any manner by threatening or pressurizing the witnesses who are connected with the alleged crime.
- d) The applicant shall attend the concerned Police Station in the first week specifically on Wednesday of every month between 10.00 a.m. to 01.00 p.m.

JUDGE