

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

CRIMINAL APPLICATION (BA) NO.451 OF 2023

Dipak S/o Ratan Pawar

Vs.

State of Maharashtra, through PSO, PS Chandur Railway, District Amravati

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

Court's or Judge's orders.

Shri V.A. Kilor, Advocate for applicant.

Shri S.M. Ghodeswar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JULY 27, 2023.

The present application is for grant of bail in connection with Crime No.499/2022 registered with Police Station, Chandur Railway, District Amravati for the offences punishable under Sections 143, 147, 148, 149 and 302 read with Section 34 of the Indian Penal Code. The applicant is arrested on 23.09.2022 and since then he is in jail.

2. The crime is registered on the basis of a report lodged by Moin Khan Rehman Khan, who is the brother of the deceased Naeem. As per the allegation in the report, the deceased Naeem Khan was the elder brother of the informant and not residing alongwith him. On 21.9.2022, as the deceased Naeem had kidnapped the daughter of one Saiyyad Farookh, the wife of Saiyyad Farookh lodged a report against the deceased Naeem and since then he was not traceable. The father of the kidnapped girl Saiyyad Farookh has threatened that if he finds Naeem in the

locality, he will kill him. On 23.09.2022, when the informant was at his home, he received a message that his brother, deceased Naeem, is lying in a pool of blood. He immediately rushed to the spot, he was informed by her mother that deceased Naeem was referred to the hospital. At the hospital, he came to know that Saiyyad Farookh and Saiyyad Afhroz, who are sons of Saiyyad Farookh, have assaulted his brother by means of a sharp weapon and caused his death.

3. On the basis of the report lodged, the police have registered the offence against the applicant alongwith other co- accused.

4. Heard learned counsel Shri V.A.Kilor for the applicant and learned Additional Public Prosecutor Shri S.M. Ghodeswar for the State.

5. Learned counsel Shri V.A.Kilor for the applicant, submitted that the name of the applicant though revealed during the investigation the only allegation against the present applicant is that he has pelted stones towards the deceased and assaulted the deceased by fist and kick blows. The statements of the eye-witnesses are recorded and they have also attributed a similar role to the present applicant. In fact, the applicant is not connected with the alleged crime. The death of the deceased is caused due to the head injury. The said injury is attributed to the co-accused Sandip Shende. Now the investigation is completed and charge-

sheet is filed. The charge-sheet is completely silent regarding the delayed statements of two eye-witnesses. As far as the role of the present applicant is concerned, now the investigation is completed and his further custody is not required and no purpose will be served by keeping him behind bars.

6. Learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State, strongly opposed the application on the ground that the statements of eye-witnesses clearly show the involvement of the applicant in the crime. There are several criminal antecedents against him as six offences are registered against him. He submitted that the death of the deceased is caused due to the assault at the hands of the present applicant and other co-accused. Hence, prays for the rejection of the application.

7. Having heard learned counsel for the applicant and learned APP for the State. On perusal of the investigation papers, it reveals that the eye-witnesses have only stated about the presence of the present applicant. The summary filed by the investigating officer shows that during the investigation it reveals that the applicant pelted the stones and assaulted the deceased by fist and kick blows. The statement of the mother of the deceased is recorded. She also not attributed any specific role to the present applicant. As far as the criminal antecedents are concerned, learned counsel Shri Kilor placed reliance on the order of this Court

in Criminal Application (BA) No.778/2021 (Pavan S/o Nandkishor Sedani Vs. State), wherein this Court has observed that though the antecedents would be relevant, however, bail cannot be denied on the ground that there are two prosecutions already registered against the accused. Admittedly, merely because the criminal antecedents are there and the offences are registered against the applicant previously is not sufficient to reject the application. In the present case, considering the material collected during the investigation, only his presence is marked by the eye-witnesses even though none of the eye-witnesses have stated that the present applicant has pelted the stones and assaulted the deceased by fist and kick blows. Even accepting the contention of the investigating officer the only role to the present applicant is that he has assaulted the deceased by fist and kick blows and by pelting stones. The postmortem report shows the death of the deceased is caused due to the head injury, which is attributed to the co-accused – Sandip Shende. In view of the above observations, the applicant has made out a case for grant of bail. Accordingly, I proceed to pass the following order:

ORDER

- i. The criminal application is allowed.
- ii. Applicant - Dipak S/o Ratan Pawar, be released on bail, in connection with Crime No.499/2022 registered

with Police Station, Chandur Railway, District Amravati for the offence punishable under Sections 143, 147, 148, 149 and 302 read with Section 34 of the Indian Penal Code, on his execution P.R.Bond in the sum of ₹25,000/- with one or two solvent surety of the like amount.

iii. The applicant shall attend the trial court regularly and cooperate with the trial court for concluding of the trial.

iv. Without prior permission of the trial court, the applicant shall not leave jurisdiction of Amravati City.

v. The applicant shall not directly or indirectly make any inducement, threat or promise to any of witnesses connecting with the alleged crime.

With this, the application is disposed of.

JUDGE

Wagh