



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

CRIMINAL APPLICATION (BA) NO. 610 OF 2023

Baban s/o Sakharam Thigale .Vs. State of Maharashtra.

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

Court's or Judge's Order

Mr. A.S. Mardikar, Senior Counsel a/b Mr. D.P. Singh, Counsel
for the applicant.

Mrs. M.R. Kavimandan, APP for Respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/11/2023.

1. Present application is filed by applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 205/2022 registered with Andhera, District Buldhana for the offences punishable under Sections 143, 147, 148, 302, 307, 452, 506, read with Section 149 of the Indian Penal Code along with Section 135 of the Maharashtra Police Act. The applicant is arrested on 04/07/2022 and since then he is in jail.

2. Learned Senior Counsel Mr. A.S. Mardikar for the applicant submitted that crime is registered on the basis of report lodged by Dattatraya Wamanrao Dhud who alleged that there was a previous dispute between the family members of the present applicant and the informant on account of agricultural land by way of boundary. Previously also, they have filed the

report against each other. On 28/06/2022 at about 11.30 p.m., when informant Dattatraya was cultivating his land along with his brother Vinod and other family members, at the relevant time, present applicant along with other co-accused entered in their field along with weapons, like Axe, Stick and Iron Rod in their hand.

3. It is further alleged by the informant that present applicant Baban Thigale raised the quarrel with them by saying that, why they have lodged report against them and started abusing them. Though informant tried to convince him that they will settle the dispute, however he was not in a position to hear and started assaulting. At the relevant time, present applicant was holding iron rod in his hand, co-accused Shyamsunder Thigale was holding Axe, Dipak Tekale was holding Stick. As per the allegation, Shyamsunder Thigale has given a blow of Axe on the head of Vinod and present applicant has given a blow of iron rod on his back. When informant attempted to intervene in the quarrel, he was also assaulted by Shyamsunder by means of Axe.

4. He further alleged that his sister-in-law was also present at the relevant time. To save them into the clutches, they have fled away from the spot of incident. Thereafter, he received phone call of Nilesh

Gajanan Lahane, who disclosed to him that, all the accused entered in their house and assaulted their parents. Due to the said assault, his mother Kushiwarta succumb to the death. On the basis of the said report, the police have registered the crime.

5. Learned Senior Counsel submitted that the co-accused Deepak and Nikhil are already released on bail. As far as the role of the present applicant is concerned, only allegations against him is that he has given a blow of iron rod on the back of Vinod. He pointed out towards the medical certificate of injured Vinod, who has sustained the simple injury i.e. also head injury which was assigned to the co-accused Shyamsunder Thigale. He submitted that as far as the allegation against the present applicant that, he gave a blow of iron rod on the back of Vinod. As far as the Vinod is concerned, no injury is noted by the Medical Officer on the back of injured Vinod.

6. He further invited my attention towards the statement of various witnesses including Vinod Wamanrao Dhud. The supplementary statement of Dattatraya, statement of Nilesh and submitted that though, Dattatraya has stated that he was informed by Nilesh, his mother was assaulted by the co-accused Shyamsunder and the present applicant along with

other accused, however Nilesh nowhere stated or disclosed that all the accused have assaulted the deceased.

7. He pointed out towards inconsistencies which are appearing for the statement of various witnesses, who are alleged to be the eye witnesses of the incident.

8. He pointed out that general allegations are made against applicant and all other accused that, all these persons have assaulted the deceased Kushiwarta. Considering the statements and the injury sustained by the Kushiwarta, it is not corroborating to each other. The similar role is assigned to Dipak Tekale, who is already released on bail. Now, investigation is completed and charge-sheet is filed no purpose will be served by keeping the present applicant behind the bar and prays for releasing him on bail..

9. Learned APP vehemently submitted that in furtherance of the common intention all the accused and present applicant assaulted the deceased. The prima-facie case is made out against the present applicant. If the present applicant is released on bail, there is every likelihood of occurrence of similar type of incident and there is also likelihood of tampering of the witnesses and prays for rejection of the application.

10. Having heard learned Senior Counsel for the applicant and learned APP for the State, perused the investigation papers.

11. From the recitals of the FIR, it reveals that as far as the allegation against the present applicant is concerned, is only to the extent that, he has given a blow of iron rod on the back of Vinod. The medical certificate nowhere discloses that the Vinod has sustained the injury on his back. As far as the death of Kushiwarta is concerned, there is no allegation against the present applicant that he either assaulted the deceased by means of iron rod. The general allegations made against all the applicants that they have assaulted the deceased by the Weapons in their hand. The specific allegations is against the co-accused Shyamsunder to whom the role of the assault on the deceased is assigned.

12. Considering the nature of investigation and the role attributed to the present applicant, it reveals that alleged incident has occurred due to the previous dispute on account of agricultural land boundary. The applicant is not involved in assaulting the deceased. Even if it is accepted that, he has given a blow of iron rod on the back of Vinod, Vinod has not sustained any injury on his back. A detailed discussions

regarding the evidence against the present applicant is not required, at this stage, investigation is already completed, the incriminating articles are already recovered and role of the present applicant is to be taken into consideration that he has attributed with the role of assault on the Vinod.

13. In view of that, considering the investigation is completed and charge sheet is filed, the applicant is behind the bar since 04/07/2020 i.s. more than two years. There is no likelihood that trial would conclude in the near future, application deserves to be allowed by imposing certain condition. Accordingly, I proceed to pass following order:

- a] Criminal application is allowed.
- b] The applicant -Baban Sakharam Thigale in connection with Crime No. 205/2022 registered with Andhera, District Buldhana for the offences punishable under Sections 143, 147, 148, 302, 307, 452, 506, read with Section 149 of the Indian Penal Code along with Section 135 of the Maharashtra Police Act, is hereby released on bail on executing P.R. bond of Rs. 30,000/- with one solvent surety in the like amount.

- c] The applicant shall not enter in the vicinity of the village Katoda, Tah. Chikhali, District Buldhana, till conclusion of the trial.
- d] The applicant shall furnish his cell phone numbers and his address along with the address proof with the investigating agency and provide names of the two relatives along with address proof.
- e] The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- f] The applicant shall furnish his details of residential address before the learned trial Court along with address proof.
- g] Bail before the lower Court.

Criminal Application is **disposed of**.

[URMILA JOSHI-PHALKE, J]