

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

CRIMINAL APPLICATION (BA) NO.634 OF 2023

Ashok s/o Laxmanrao Bowade

Vs.

State of Maharashtra, through Officer In-charge, Police Station, Karanja (Ghadge)
District Wardha

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

Court's or Judge's orders

Ms. A. H. Dangre, Advocate for applicant.
Mr. S. M. Ghodeswar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 28/07/2023

1. The present application is for seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.26/2023 registered with Police Station Karanja (Ghadge) for the offences punishable under Sections 302, 294 and 506 of the Indian Penal Code. The applicant is arrested on 22.01.2023.

2. The accusation against the present applicant is that the present applicant is the neighbour of the informant and there was some dispute between them on trifling reasons. On 21.01.2023 when his father Vishwanath Deshmukh was roaming along with his son, at the relevant time present applicant has assaulted him by giving blow of stick, thereafter, his father has come home. On 22.01.2023 also at about 7.00 a.m. again

present applicant has abused his father and threatened him that he will kill him. At about 8.00 a.m., when he was at dairy shop, at that time he came to know that his father was again assaulted by the present applicant in front of his house by giving blow of the stick on his head and his father succumbed to the death. On the basis of the said report, the police have registered the crime against the present applicant.

3. As per the contention of the present applicant, there was dispute between the father of the informant and him and in the scuffle, he just pushed the deceased in which deceased has sustained injuries and succumbed to the death. There was either no intention to commit the murder of the deceased. In a sudden quarrel the alleged incident has taken place. Now the investigation is completed and chargesheet is filed. At the most, the case covers under Section 304 Part II of the Indian Penal Code. Considering the same, the applicant be released on bail.

4. The said application is strongly opposed by the State. The learned APP submitted that there are eye witnesses who have witnessed the incident. The statements of the eye witnesses show that the deceased was assaulted by the present applicant by giving blow of stick. Due to the said blow, deceased has sustained the internal injury and he succumbed to the death. Thus,

the *prima facie* case is made out against the present applicant. As far as the applicability of Section 304 Part II of the Indian Penal Code is concerned, it is matter of evidence. At this stage, there is *prima facie* case against the present applicant and bail application deserves to be rejected.

5. Heard learned Counsel for the applicant Ms. Dangre. She reiterated the contention and invited the attention towards the postmortem report which shows that the deceased has sustained contusion on scalp in parieto occipital region of size 5 X 3 cm. There is corresponding injury on the scalp which is in the nature of under scalp contusion present over parieto occipital region. However, no fracture was seen. The cause of death is head injury. The stick is recovered from the present applicant are referred for the expert opinion. The Medical Officer specifically opined that the injury sustained by the deceased is not possible with above examined weapon.

6. On the basis of this report, learned Counsel for the applicant submitted that, the prosecution story that the applicant has given a blow of stick is falsified by the medical evidence, whereas the contention of the applicant that in this scuffle the applicant has pushed the deceased in which, he fallen down and sustained the injury is substantiated. Now, the investigation is

completed and chargesheet is filed. Further custody of the present applicant is not required and no purpose will be served by keeping the present applicant behind the bar. Moreover, there are no criminal antecedent against the present applicant. In view of that, applicant be released on bail.

7. Having heard both the sides and on perusal of the investigation papers. It reveals that there was previous dispute between the applicant and the deceased. The incident dated 21.01.2023 regarding the assault on the deceased by stick is not substantiated by any medical certificate. As far as the incident dated 22.01.2023 is concerned, it is apparent that as the deceased has sustained the head injury, he succumbed to the death. The statements of the eye witnesses show the involvement of the present applicant in the alleged offence. The medical evidence especially postmortem shows only one injury sustained by the deceased which is in the nature of contusion present on scalp and in parieto occipital region of size 5 X 3 c.m. which is also having corresponding injury on the head. The cause of death also due to the head injury. As far as the opinion of the Medical Officer is concerned, he specifically opined that this injury is not possible by weapon like stick. In view of that, the contention of the applicant is to be taken into consideration at this stage. Admittedly, the alleged incident has taken place due to the sudden quarrel, and

in the said sudden quarrel the deceased has sustained the injury. There are no criminal antecedents against the present applicant. The investigation is already completed. Considering the circumstances in which the alleged incident has taken place, and there are no criminal antecedents, the application deserves to be allowed by imposing certain conditions. In view of that I proceed to pass following order.

(i) The application is allowed.

(ii) The applicant **Ashok s/o Laxmanrao Bowade** is released on bail in Crime No.26/2023 registered with Police Station, Karanja (Ghadge), District Wardha, for the offences punishable under Sections 302, 294 and 506 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Sawal, Taluka Karanja, District Wardha, till disposal of the Sessions Trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)