

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

Criminal Application (BA) No. 662 of 2023

[Shubham S/o Sariputra Shirsat (in jail) ..vs.. State of Maharashtra, through P.S.O. PS. Civil Line,
Akola, Tq. Dist. Akola]

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

Court's or Judge's orders

Mr. A. S. Londhe, Advocate for the applicant
Mr. A. M. Kadukar, APP for the State/non-applicant

CORAM : URMILA JOSHI PHALKE J.

DATE : 11-08-2023

Present application is for bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 167/2023 registered under Section 302 read with Section 34 of the Indian Penal Code. The applicant is arrested on 2-6-2023.

2. The applicant is arrested on the basis of report lodged by Suresh Tukaram Wakode on allegation that on 12-5-2023 at about 8.00 p.m., his son had been to Railway Station, Akola for some work and was returning. At the relevant time, one vehicle has dashed his motorcycle from the backside. Due to the dash, he fell down on the ground. Co-accused namely, Waman Baburao Thombare, Pramod Thombare and others assaulted the deceased. Deceased has sustained grievous injuries which resulted into his death. It is alleged that

the family members of the informant are prosecuted in the murder of one Vinod Thombare and, therefore, there was a previous enmity between two groups due to which death of deceased was caused by co-accused Pramod Thombare, Waman Thombare and others. On the basis of said report, police have registered the crime. During investigation, name of the present applicant was also revealed and, therefore, he was arrested.

3. As per the contentions of the present applicant that he is arrested merely on suspicion, there is no direct or circumstantial evidence to connect him with the alleged offence. None of the eye witnesses have named him in their statements. Nothing has recovered from him. Merely, on the basis of CDR report, he is implicated in the crime. Investigation is completed and charge-sheet is filed. The applicant is behind the bars for sufficient period since the date of his arrest from 2-6-2023. His further custody is not required and no purpose will be served by keeping him behind the bar.

4. Said application is strongly opposed by the State on the ground that considering the gravity of offence, due to previous enmity between two groups, death of deceased is caused. Present applicant is also involved in

the said offence as revealed from the CDR report as there was continuous calls between the present applicant and the other co-accused. Considering the *prima facie* evidence against the present applicant, learned APP prays for rejection of the application.

5. Heard learned counsel for the applicant and learned APP for the State. Perused the investigation papers. The recitals of the FIR shows that there was a previous enmity between the family of Suresh Tukaram Wakode and Waman Thombare. The family members of the informant namely, his son and others were prosecuted for the murder of one Vinod Thombare and, therefore, there was enmity between the two families.

6. During investigation, the Investigating Officer recorded the statements of eye witnesses including eye witness, namely, Gaurav Sanjay Mankar, who was along with the deceased at the relevant time. He has also not named the present applicant. Therefore, presence of the present applicant is not revealed on the spot of incident. The entire prosecution case is rested upon the CDR report as far as the involvement of the present applicant is concerned. On perusal of the CDR report, location of the present applicant was concerned, as collected by the

Investigating Officer till 12-5-2023, location shows as far as present applicant is concerned at about 9.00 p.m. near Tapdia Nagar, Akola. Except CDR Report, there is no direct or circumstantial evidence to connect the present applicant with alleged crime. Considering the material collected during the investigation, mere CDR report is the only circumstance against the present applicant. Considering the nature of the material, the application of the present applicant for grant of bail deserves to be considered and he deserves to be released on bail. Accordingly, I proceed to pass the following order.

- (i) The application is allowed.
- (ii) The applicant is released on bail on executing PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one solvent surety of like amount.
- (iii) The applicant shall attend the police station once in a month till conclusion of the trial.
- (iv) The applicant shall not induce the prosecution witness in any manner.

7. The application is disposed of.

JUDGE

Digitally signed by AVINASH
YUVRAJ WASNIK
Signing Date: 11.08.2023 18:57