



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

CRIMINAL APPLICATION (BA) NO. 722/2023

Umesh s/o Subhash Nikam V/s The 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. Tushar Tathod, counsel h/f Mr. Khan Parvez Mubarak, counsel for the applicant

Mr. Hulke, APP for the non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/12/2023.

1] By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 158/2023 registered with Police Station Daryapur, Tq. Daryapur, District Amravati for the offence punishable under Section 326 of the Indian Penal Code, 1860. The applicant is arrested on 06/03/2023 and since then he is in jail.

2] The learned counsel for the applicant submitted that the accusations against the present applicant is on the basis of the report lodged by the wife of the deceased Jyoti Parasram Kolhe, who alleged that her husband deceased Parasram Sukhdevrao Kolhe was addicted to drink liquor. On 25/02/2023, at about 8.00 a.m. he went outside the

house and returned at 7.00 p.m. When her husband returned at home, he had an injury on his right leg and blood was oozing from the said injury, therefore, she inquired with him and disclosed that he was assaulted by one person by Nikam. Immediately with the help of the brother-in-law Narendra Sukhdevrao Kolhe, her son, she shifted her husband in the hospital of Dr. Gulhane at Daryapur. Dr. Gulhane has referred her husband at Amravati and therefore, she removed him in the private vehicle at Dr. Panjabrao Deshmukh Hospital and Research Centre, Amravati. She received the information from the Medical Officer that her husband had sustained the injury on his head and her husband was admitted in the hospital. On the basis of this information, she lodged the report. On which, the FIR was registered.

3] The learned counsel for the applicant invited my attention towards the medical report which shows that the history narrated was fall on 25/02/2023 at Daryapur around 9.00 p.m. As per the said report, the patient was brought to the hospital on 26/02/2023 at 10.41 a.m. During the hospitalization, repeatedly history of fall on 25/02/2023 at 9.00 p.m. is recorded.

4] He submitted that after going through the investigation papers, it further reveals that after performing the surgery of the deceased, the relatives of the deceased were informed, and consent of the relatives is recorded to the extent that, the deceased has sustained the accidental injuries, and the blood clot which was operated and they were given an understanding that after the surgery there is threat of the death and they are aware about the same.

5] The learned counsel for the applicant further invited my attention towards various statements and submitted that as per the statement of the brother of the deceased, the deceased was taken to the hospital and he narrated a completely different story, stating that on 25/02/2023 his brother came at home and disclosed that he was assaulted by one Nikam. Thereafter, he was taken to the hospital and subsequently, he was referred to the Government Hospital at Nagpur. His brother never regain consciousness and alleged that his brother was assaulted in the liquor shop.

6] He has also invited my attention towards other statement of the witnesses which shows that the deceased was assaulted by one Nikam in the liquor shop by means of stick on his head.

7] The learned counsel for the applicant vehemently submitted that three stories are put up by the prosecution. The deceased never disclosed that he was assaulted by the stick. The accidental injury history is narrated before the medical officer. The entire sequence of the incidents narrated creates doubt about the prosecution case. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required and hence he be released on bail.

8] The learned APP strongly opposed the present application on the ground that there are four eye witnesses of the incident which completely shows the involvement of the present applicant in the alleged offence, if the applicant is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

9] On perusal of the investigation papers, it reveals that the informant has lodged the FIR, on an allegation that on 25/02/2023, her husband returned at home at about 7.00 p.m. having bleeding injury on his right leg and disclosed that he was assaulted by one Nikam, immediately she has taken to in the hospital of Dr. Gulhane. Dr. Gulhane referred him at Amravati. He was admitted at Amravati and thereafter

she has lodged the report. The medical examination reports of Dr. Panjabrao Deshmukh Hospital and Research Center, Amravati show that the injured was admitted in the hospital on 26/02/2023 at about 10.41 a.m. with a history of fall under the influence of liquor on 25/02/2023 at Daryapur around 9.00 p.m.

10] It further reveals from the medical case papers of Dr. Panjabrao Deshmukh Hospital and Research Center, Amravati that, the deceased was admitted in the said hospital and patients were well aware regarding the health of the deceased. It further reveals from the investigation papers that the deceased was shifted to the Government Hospital at Nagpur, wherein he has undergone the surgery. In the Medical Hospital at Nagpur also, the similar history was narrated that deceased has sustained the injury as he fall under the influence of liquor. The various statement recorded by the investigating officer shows that deceased was assaulted. The statements are recorded after 15 days of the incident, including the statements of Gajanan Pundlikrao Parde, Sudhir Rangrao Pedhekar.

11] Considering the investigation papers, the recitals of the FIR and the medical reports are completely contradictory to each other. As per the FIR,

immediately on 25/02/2023 itself, the patient was admitted in Dr. Panjabrao Deshmukh Hospital and Research Center, Amravati, whereas admission papers show that he was admitted in the hospital 26/02/2023. The history of accidental injuries are mentioned in the medical case papers.

12] Considering the inconsistencies in the investigation papers, at this stage also, it creates doubt regarding the prosecution case. However, there are statements of the eye witnesses recorded by the Investigating Officer, therefore, it would not be appropriate to comment about the authenticity of the statements of the eye witness and other contradictory evidential material. Considering the prosecution case as it is, at this stage, the investigation is already completed, charge-sheet is filed. Considering the nature of the material, no purpose will be served by keeping the present applicants behind bar. He is already in jail since the date of his arrest.

13] In the above facts and circumstances, In my opinion, criminal application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

[i] Criminal application is allowed.

- [ii] The applicant is released on bail in connection with Crime No. 158/2023 registered with Police Station Daryapur, Tq. Daryapur, District Amravati for the offence punishable under Section 326 of the Indian Penal Code, 1860, be released on anticipatory bail on furnishing 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 Tahsil Daryapur, District Amravati till the conclusion of the trial.
- [iv] The applicant shall furnish his cell phone number and address along with the address proof.
- [v] The applicant shall not induce threat or promise to any witnesses, who are connected with the alleged crime.

Criminal application is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J]