



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

CRIMINAL APPLICATION (BA) NO.786 OF 2023

Janrao s/o Prakash Waghurwagh

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Balapur
Tq. Balapur District 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. M. Tirukh, Advocate for applicant.
Mr. Halshal Phutane, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/12/2023

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.581/2022 registered with Police Station, Balapur, District Akola for the offence punishable under Sections 302, 304 read with Section 34 of the Indian Penal Code. The applicant is arrested on 06.12.2022 and since then he is behind bar.

2. Learned Counsel Mr. Tirukh for the applicant submitted that the crime is registered on the basis of report lodged by Yogesh Ashok Rajgure cousin brother of the deceased who alleged that on 05.12.2022 at about 3.30 p.m. he received a phone call of his cousin brother Gautam Suresh Rajgure and informed him that the mother-in-law of the deceased Ravi informed to him that

Ravi is lying at Manarkhed in injured condition. He immediately visited the village Manarkhed and witnessed that deceased was lying in injured condition in a pool of blood and it was informed that said deceased had been to her house to bring back to his wife and there was a quarrel and he caused the injury to himself which was a self incriminated injury. After the deceased was taken to the hospital, he declared dead. On the basis of report, FIR is lodged as suspicion was raised against the present applicant and other two accused. On the basis of said report, police have registered the crime against the present applicant.

3. He submitted that during the investigation, the Investigating Officer has recorded the various statements of the witnesses, none of the witness have stated regarding the presence of the present applicant at the spot of the incident. When the informant has visited the alleged spot of incident the applicant was not present and his presence has not come on record to any of the witness. Thus there is no *prima facie* case against the present applicant to connect him with the alleged offence. Only material collected by the Investigating Officer is that on the basis of memorandum statement wooden plank is recovered. Except this material nothing is on record to connect the present applicant with the alleged offence.

4. Learned APP strongly opposed the application on the ground that during the investigation, the Investigating Officer has collected the CDR report, the death of the deceased is caused in the house of present applicant and other co-accused. There is no explanation from the present applicant in what circumstances the alleged incident has taken place. Thus *prima facie* case is made out against the present applicant and prays for rejection of the application.

5. Having heard the learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. Admittedly, except the memorandum statement under Section 27 of the Evidence Act on the basis of which wooden plank is recovered. No other material is collected during the investigation to show that either present applicant was present when the deceased has visited the house of his mother-in-law or none of the statement shows his presence at the spot of incident. Thus except this suspicion raised by the witnesses, no other material is on record to connect the present applicant and for a sufficient period the present applicant is behind bar and further incarceration of the present applicant is not required. In the above facts and circumstances, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Janrao s/o Prakash Waghurwagh** be released on bail in connection with Crime No.581/2022 registered with Police Station Balapur District Akola, for the offence punishable under Sections 302 and 304 read with Section 34 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 induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (iv) The applicant shall not enter into the Navanagar, Balapur, till the culmination of the trial.

(URMILA JOSHI-PHALKE, J.)