



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

CRIMINAL APPLICATION (BA) NO.912 OF 2023

(Tousifuddin Quazi s/o Faizuddin Quazi Vs. The State of Maharashtra thr. PSO PS
Old City, Akola, 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. R. R. Vyas, Advocate for Applicant.
Mrs. M. A. Barabde, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 7th DECEMBER, 2023.

By preferring this application, the applicant is seeking bail under section 439 of Cr.P.C. in connection with Crime No.521/2022 registered with Police Station Old City, Akola, District Akola for the offences punishable under sections 302 and 120-B read with section 34 of the Indian Penal Code and under section 4 and 25 of the Arms Act, the applicant is arrested on 01.11.2022.

2. The accusation against the present applicant is on the basis of report lodged by Syed Asif Syed Abbas. The learned counsel for the applicant submitted that from the recitals of the FIR it reveals that there was previous dispute between the present applicant and the family members of the informant. It is alleged that the present applicant is nephew of the informant. On account of the old dispute between informant and the applicant on 31.10.2022 at about 07:00 p.m. the informant along with his wife had

been to the house of the father-in-law of his nephew namely Amin, when they were about to leave the house of Maqsood Bihari they heard shouts of the people who informed that quarrel is going on in front of Aliza Medical Store. He immediately along with his wife went in front of Aliza Medical Store and witnessed that the parents of present applicant were dragging him and applicant was holding knife in his hand having blood stains, he put said knife in one bag and ran away from the spot of incidence. He also witnessed that his nephew was lying in a pool of blood sustained injuries on the chest and other parts of body, immediately injured was shifted to the hospital but he was reported to be dead. On the basis of said report FIR is also lodged against the present applicant.

3. The learned counsel for the applicant submitted that the entire allegations against the present applicant are made only to implicate him falsely. He invited my attention towards *panchnama* drawn under section 27 of the Indian Evidence Act and submitted that the recovery *panchnama* shows the length of the alleged weapon knife 35.2 cm and the blade width is of 22 cm the width of the blade is 4 cm and the handle is 13.2 cm whereas the query report shows the description of incriminating weapon as length 55 cm blade 20 cm width of the blade 5 cm and handle length 11 cm and submitted from this description and the injury sustained by the injured have not corroborative feature. There is certain discrepancy in the description of the weapon which is mentioned in the *panchnama* recorded

under section 27 of the Indian Evidence Act and the query report issued by the Medical Officer. He further submitted that there was a previous dispute between the deceased and the present applicant. The present applicant has lodged FIR against him prior to this incident the deceased was assaulted by somebody else and by taking advantage of the said incident present applicant is implicating now investigation is completed charge-sheet is filed no purpose will be served by keeping the present applicant behind bar and hence he be released on bail.

4. The learned APP strongly opposed the application on the ground that the deceased has sustained as many as 18 injuries. She further submitted that as far as there is discrepancy regarding the description of the weapon is concerned it is the matter of fact at this stage direct evidence that the informant and his wife are the eye witnesses of the incident showing that they have witnessed the present applicant holding knife in his hand. The wife of the deceased and Sk. Nazim Sk. Ahmed both are the eye witnesses of the incident. Thus, *prima facie* case is against the present applicant, considering the previous dispute between the deceased and the present applicant the statements of the eye witnesses shows *prima facie* involvement of the present applicant. The present applicant has not shown any remorse towards the deceased and gave repeated blows which shows the intention. Now investigation is completed and charge-sheet is filed and trial can be commenced at any point of time and prays for

rejection of the application.

5. Having heard the learned counsel for the applicant and the learned APP for the State. Perused the investigation papers there is no dispute as to the fact that there was a previous enmity between the deceased and the present applicant which appears from the FIR lodged by the present applicant against the deceased. As far as the present incident is concerned as per the recitals of the FIR the informant had been to the house of the father-in-law of the deceased, he heard the shouts and therefore, he visited the alleged spot of incident and witnessed the present applicant holding knife with blood stains in his hand. During investigation the Investigating Officer has seized blood stained knife and blood stained cloth of the present applicant, the PM report shows that deceased has sustained as many as 18 injuries on the vital part of the body in the nature of incised wound on the chest. There are internal injuries mentioned in column No.18, the death of the deceased is due to hemorrhage and shock due to multiple stab injuries. As far as the contention of the learned counsel for the applicant is concerned regarding the discrepancy of the weapon is concerned, at this stage the direct evidence is available against the present applicant, therefore, this discrepancy can be considered at the time of trial and not at this stage. At this stage the evaluation of the evidence is not required. Whether there is a *prima facie* case is to be seen. The direct evidence in the nature of the statement of the eye witnesses, medical evidence and the circumstantial evidence

and the blood stained cloth of the present applicant are seized are sufficient to show the involvement of the present applicant. Considering the gravity of the offence the involvement of the present applicant who assaulted the deceased by giving stab blow *prima facie* case is made out. In view of that the application for grant of bail deserves to be rejected. Accordingly, the application is rejected.

JUDGE

NSN