

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

CRIMINAL APPLICATION [APPA] NO. 1033/2022
IN CRIMINAL APPEAL NO. 803/2022.

Bablu Vitthalrao Dongare.

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A.S. Manohar, Advocate for the Applicant/Appellant.
Shri M.J.Khan, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : JANUARY 31, 2023.

Heard.

2. This is an application in terms of Section 389 of the Code of Criminal Procedure seeking suspension of execution of sentence passed by the learned Sessions Judge, Yavatmal in Sessions Trial No.123/2019, whereby the applicant/accused has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to undergo imprisonment for life along with fine.

3. The prosecution case in brief is that, there was dispute in between the accused and deceased Bunty, who was

brother of informant Nikesh. On 20.10.2018 around 9.30 a.m., the accused started to abuse the deceased on which quarrel erupted, which was pacified. However, within short time, while the deceased was near hand-pump on the road, the accused came and inflicted knife blows at the chest of the deceased. At the relevant time, the informant – Nikesh, his brother Sachin and mother Rama intervened. The accused also assaulted mother of the deceased and left the place.

4. The prosecution has mainly relied on the direct evidence of three eye witnesses i.e. P.W.1 – Nikesh, P.W.3 – Rama and P.W.5 – Deepak. Blood stained clothes of the accused have been seized. On the basis of oral and documentary evidence, the trial Court has held that the offence of murder has been proved against the accused.

5. The learned Counsel appearing on behalf of the applicant/accused would submit that the trial Court has seriously erred in appreciating the evidence. It is submitted that the oral evidence of eye witnesses is inconsistent. Presence of witnesses on the spot is doubtful. The prosecution has not examined the material witnesses who have shifted the deceased to the hospital. The prosecution has also not examined independent eye witnesses. The applicant has also challenged

the seizure of blood stained clothes from the accused. It is submitted that the seized clothes have not been sealed properly. The seizure of clothes is also doubtful as the same set of Panchas have been used for carrying all panchnamas.

6. The learned Counsel for the applicant/ accused would submit that in the said incident the accused also sustained injuries, which has not been explained by the prosecution, which goes to the root of the case. It is argued that though police had arrived on the spot around 10 a.m., the first information report has been lodged at 2.49 p.m., and thus, there is considerable delay giving rise to the possibility of concoction.

7. Per contra, the learned A.P.P. resisted the application by contending that the prosecution case is based on direct evidence of three eye witnesses. It is submitted that the blood stains found on the clothes of the accused were of the blood group of the deceased. According to the State, the first information report has been lodged in close proximity and thus, there is no delay in lodging of the first information report. The evidence of eye witnesses is consistent on material aspect. Moreover, it is submitted that the trial Court has dealt with all the submissions and thus, the evidence is convincing about the

complicity of accused, and therefore, prayed for rejection of this application.

8. At the inception we may note that we are considering the submissions to the limited extent of dealing with the application for suspension. At this stage it is not required, nor expected to meticulously scan the material, as is required at the time of final hearing of the appeal. We have seen whether prima facie case emerges against the applicant/accused or there are strong chances of success in the appeal.

9. The first information has been lodged by Nikesh around 2.49 p.m. stating about direct role of the applicant. As per the first information report the occurrence took place at 10 a.m., meaning thereby within 4 hours the first information has been lodged. Therefore, prima facie we do not find that it is a case of unexplained delay in lodging of the first information report. Of course it is a matter of trial to have meticulous examination on this aspect.

10. The learned Counsel for the applicant / accused has relied on the decision of the Supreme Court in case of **Thulia Kali .vrs. The State of Tamil Nadu – [1972] 3 SCC 393**, to impress about the importance of delay in lodging of the first information report. There can be no dispute about the said

proposition of law. On the basis of given facts of the case, it is to be decided whether there was inordinate delay in lodging the first information report, which can be scrutinized at the time of hearing of the appeal.

11. The learned Counsel for the applicant/accused has relied on the decision of Supreme Court in cases of [1] **Takhaji Hiraji .vrs. Thakore Kubersing Chamansingh and others – [2001] 6 SCC 145** and [2] **Lakshmi Singh and others .vrs. State of Bihar – [1976] 4 SCC 394**, to contend that, it is for the prosecution to explain the injuries on the person of the accused. In this regard he took us through the cross examination of the medical officer and arrest panchnama to show that there were certain injuries on the person of the accused. Admittedly no injury certificate was produced, nor the accused led any evidence in defence. The medical paper discloses that there was laceration on the chest, blunt trauma at head and throat. Pertinent to note that the accused has not come up with a specific case of exercise of right of private defence. Moreover, the case rests on direct evidence of eye witnesses. Therefore, at this stage, submission in this regard does not influence us in any manner.

12. The learned Counsel for the applicant further relied

on the decision of the Supreme Court in case of **State of Haryana .vrs. Ram Singh – AIR 2002 SC 620**, to contend that use of same panchas for all seizures is a matter of suspicion. Besides that it has been submitted that fair investigation is part of Article 21 of the Constitution of India. For this purpose, reliance is placed on the decision of the Supreme Court in case of **Babubhai .vrs. State of Gujarat and others – [2010] 12 SCC 254**.

13. Prima facie examination discloses that P.W.1 Nikesh has stated that in his presence the accused dealt knife blows on the chest of his brother. He has also stated about the presence of his mother as well as witness namely Deepak. Similarly, the first information report also bears the same statement including the presence of his mother. P.W.3 – Rama who sustained injuries in the occurrence has also stated about the role of the accused inflicting knife blow on the chest of the deceased. Similarly there is evidence of P.W.5 Deepak to that effect. Though the learned Counsel for the applicant has pointed out some inconsistencies, however, we restrict ourselves to deal with those objections leaving it to be dealt with at appropriate stage. By and large, there is direct evidence of three eye witnesses stating role of the applicant/accused and the first

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information report has been lodged within 4 hours from the occurrence specifying the role of the applicant / accused. Having regard to the above material we are not inclined to suspend the execution of sentence. Criminal Application is therefore, rejected.

JUDGE**JUDGE**