

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

CRIMINAL APPLICATION (BA) NO. 1324/2022

VAIBHAV S/O BHOJRAJ LAJURKAR
VS
STATE OF MHA. THR. PSO PS SAMUDRAPUR DIST.WARDHA

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr R.M. Daga, Advocate assisted by Mr R.V. Malviya, Advocate for
the applicant

Mr S.M. Ghodeswar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/06/2023.

1. Present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with the Crime No. 381/2022 registered at Police Station Samudrapur, District Wardha for the offences punishable under Sections 302, 307, 326, 354(A), 324, 341, 294, 323 and 506 read with Section 34 of the Indian Penal Code and Sections 3, 181, 236, 139 and 177 of the Motor Vehicle Act. The applicant is arrested on 13/07/2022 since then he is in jail.

2. The crime is registered on the basis of report lodged by the sister of the deceased namely Ku Pranoti Purushottam Wankar. On an allegation that on 11/07/2022, she had proceeded from her house to

attend her examination along with her brother. She appeared for the examination and while returning, the co-accused Kapil and present applicant restrained them and assaulted them. She alleged that co-accused Kapil assaulted her brother by means of rod by saying that her brother should insist her to marry with the said Kapil and also threatened them.

3. As per her allegation, the present applicant has assaulted her as well as her brother. On the basis of the said report , police have registered the crime against the present applicant and other co-accused. Due to the injury sustained by both of them, they were referred to the Hospital. During treatment, her brother Bhau Om Wankar, succumbed to the death on 22/07/2022 i.e. after 11 days. During his admission in the hospital, his statement was recorded which is to be treated as a Dying Declaration. As per the contention of the prosecution that, the present applicant and other co-accused caused the death of the deceased and therefore, the crime registered under Section 324 subsequently converted into Section 302 of the Indian Penal Code.

4. As per the contention of the applicant that since the date of arrest, he is in jail. Now investigation is completed and charge-sheet is filed, his further custody is not required. Moreover, no weapon is attributed to

him, as per the report lodged by the sister of the deceased. In the Dying Declaration also, the deceased has not assigned any role to him, regarding the assault on him. General allegation is made against him that the present applicant has assaulted his sister. Now, investigation is completed and charge-sheet is filed. The injury certificate of the informant shows that she has sustained injuries like blunt, trauma, laceration, and she is discharged from the hospital. As far as the cause of death of deceased is concerned, the role attributed is to the co-accused. Considering the applicant is a student and since 13/07/2022 he is in jail. Now investigation is completed and charge-sheet is filed. No purpose will be served by keeping him behind bar, application deserves to be allowed.

5. The said application is strongly opposed by the State on the ground that both the accused in furtherance of their common intention assaulted the deceased as well as injured and cause the death of the deceased. There is a prima-facie material against the present applicant, the present applicant was absconding and hence bail application deserves to be rejected.

6. Heard Mr R.M. Daga, learned counsel for the applicant. He submitted that even accepting the case of the prosecution as it is, neither informant nor the

deceased as assigned any weapon in the hands of the present applicant. The present applicant is arrested on the next date, therefore, the question of absconding does not arise. Now investigation is completed and charge-sheet is filed. He further invited my attention towards the injury certificate of the deceased. On 11/07/2022, the deceased was examined in Rural Hospital Samdurapur District Wardha and the injuries determined by the Medical Officer are the laceration 3 cm x 2 cm and blunt trauma. Thereafter, during treatment, the death of the deceased is caused due to septicaemia. He submitted that even the fact is considered that death of the deceased is not instantaneous and subsequently caused even then the role of the assault as per the dying declaration is assigned to the co-accused and not to him.

7. He further submitted that the injury certificate in respect of the injury sustained by the informant is concerned, he has sustained the injuries in the name of laceration. Now, she has discharged from the hospital and since then applicant is in jail from one year. The investigation is completed, no purpose will be served by keeping the accused behind the bar. He submitted that considering the material against the present applicant, at the most offence under Section 324 is made out against him, and therefore, he be released on

bail. He will abide by all the conditions if impose by this Court.

8. Per contra, learned APP submitted that the present applicant and other co-accused with their common intention assaulted the deceased as well as injured, if the applicant is released on bail, he will tamper with the prosecution evidence. He further submitted that there is allegation against the present applicant that he has also assaulted the deceased as well as injured. Considering the same, criminal application deserves to be rejected.

9. Having heard both the sides and on perusal of the investigation papers, it reveals that the sister of the deceased Pranoti Purushottam Wankar has lodged the report regarding the said incident on 11/07/2022. As per the allegation in the FIR, when she along with her brother was returning on the motorcycle, both the applicants are restrained them. The co-accused Kapil took a rod from the hands of the present applicant and assaulted the deceased. As per her allegations, Kapil has also assaulted her by means of the said rod. As per the role of the present applicant is concerned, she alleged that present applicant has also assaulted her as well as her brother. The dying declaration of the deceased is also recorded on 16/07/2022, when the deceased was under treatment. As per the allegation in

the dying declaration, the deceased has nowhere stated that he was assaulted by the present applicant. As far as the injuries on the person of the injured are concerned, deceased in his dying declaration discloses that it was the Kapil, who has assaulted his sister.

10. From the injury certificate, injuries sustained by the informant are simple in nature. Now, investigation is completed and charge-sheet is filed, the cause of the death of the deceased, due to septicaemia while taking treatment in the hospital. Thus, from the recitals of the FIR as well as the statement of the witness, only role assigned to the present applicant was that he was along with co-accused and assaulted the injured. There is no allegation that he assaulted the injured by means of any weapon. Considering the role assigned to the present applicant, there is no role of assault on the deceased. Considering the same application deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass following order.

- a) Criminal application is allowed.
- b) The applicant is released on bail in connection with the Crime No. 381/2022 registered at Police Station Samudrapur, District Wardha for the offences punishable under Sections 302, 307, 326, 3564(A), 324,

341, 294, 323 and 506 read with Section 34 of the Indian Penal Code and Sections 3, 181, 236, 139 and 177 of the Motor Vehicle Act, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.

- c) The applicant shall not directly or indirectly make any inducement, threat or promise induced, threats or promise tamper the prosecution evidence or contact with any of the witnesses who are connected with the alleged crime.
- d) The applicant shall not leave the jurisdiction of District Court, Wardha without prior permission of the Court.

Criminal Application is **disposed of**.

JUDGE