



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

CRIMINAL APPLICATION (BA) NO.1015 OF 2023

Rajesh s/o Nandkishor Badsar @ Chintu Sharma

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Wardha City,
Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J. M. Gandhi, Advocate for applicant.

Mr. Nikhil Joshi, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 28/11/2023

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.616/2023, registered with Police Station Wardha City for the offences punishable under Sections 302, 341 and 201 read with Section 34 of the Indian Penal Code and 4/25 of Arms Act. The applicant is arrested on 29.05.2023.

2. The crime is registered on the basis of report lodged by wife of the deceased namely Smita Rahul Virulkar. As per the allegation in the report, on 26.05.2023 deceased had been along with his friends to celebrate the birthday party. There was some dispute between the Rahul i.e. deceased and the co-accused Dinesh Yendale. Out of that dispute, there was scuffle between them and deceased was assaulted by Dinesh Yendale. At the relevant time, the present applicant was

present. It is alleged that deceased has sustained grievous injuries and succumbed to the death. After assault Dinesh Yendale and present applicant left the place and after some time again they came at the spot of incident and thereafter, Dinesh Yendale left the spot of incident in his car. On the basis of report, police registered the crime.

3. Learned Counsel Mr. Gandhi submitted that even taking into consideration the allegation as it is, no specific role is attributed to the present applicant. In fact, name Chintu Sharma is mentioned, which is not the name of the present applicant. Even it is considered that present applicant is named in the FIR by other name as Chintu Sharma, no specific role is attributed to him. His mere presence is not sufficient to attract the penal provision against him. Now, investigation is completed. Charge-sheet is filed. His further custody is not required.

4. Per contra, learned APP vehemently submitted that considering the nature and gravity of the offence, the deceased was assaulted by the co-accused when the present applicant was present along with the co-accused, hence bail application deserves to be rejected. He further submitted that if the applicant is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

5. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. On perusal of the investigation

papers, it is apparent that as per the allegation, in the intervening night of 26.05.2023 and 27.05.2023, the deceased was celebrating birthday party, at that time co-accused Dinesh Yendale came at the spot and there was some dispute between them. At the relevant time, as per the allegation, co-accused Dinesh Yendale slapped the deceased and the dispute was intervened by the others. Thereafter, deceased Rahul with his companions left the place i.e. Farhan Dhaba. Co-accused Dinesh Yendale came at the same Dhaba in his car and present applicant was along with the co-accused in his car. There was again some dispute between them. Dinesh Yendale removed sword from his car and gave a blows by the sword on the deceased. Due to which, deceased sustained grievous injuries and succumbed to the death. The Investigating Officer has recorded the relevant statements of the eye witnesses. The similar version is narrated by four eye witnesses, from which, it reveals that only role attributed to the present applicant is that he was present along with the co-accused. No overt act is on the part of the present applicant even there is no inducement or instigation. Considering the nature of the allegations, as no overt act and no active participation is on the part of the present applicant, his prayer for bail can be considered. Considering that investigation has already completed and charge-sheet is filed, the present application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant namely, **Rajesh s/o Nandkishor Badsar @ Chintu Sharma** be released on bail in connection with Crime No.616/2023, registered with Police Station Wardha City for the offences punishable under Sections 302, 341 and 201 read with Section 34 of the Indian Penal Code and 4/25 of Arms Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount,
- (iii) The applicant shall attend Police Station once in a week on Sunday between 10.00 am. to 1.00 p.m. till disposal of the trial.
- (iv) The applicant shall not in any manner tamper the prosecution evidence.
- (v) The applicant shall furnish his along with two relatives' cell phone numbers and addresses with their address proof.

(URMILA JOSHI-PHALKE, J.)