



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

CRIMINAL APPLICATION (ABA) NO.719 OF 2023

Maheshkumar s/o Chandanlal Patle

Vs.

State of Maharashtra, Through Police Station Officer, Police Station Ravanwadi,
District Gondia

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

Court's or Judge's orders

Mr. Atharva S. Manohar, Advocate for applicant.
Ms. Mukta Kavimandan, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/12/2023

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.281/2023 registered with Police Station Ravanwadi, District Gondia for the offences punishable under Sections 143, 144, 147, 148, 302, 364, 386, 341, 149, 323, 504 and 506 of the Indian Penal Code (IPC).

2. The applicant is apprehending arrest at the hands of police as allegation is made against him on the basis of report lodged by one Sandip Madanlal Thakarele who alleged in the FIR that Kishor Rathod who was his neighbour was engaged in selling fake gold ornaments. On 17.09.2023, the informant along with the deceased Kishor had gone to Om Hardware, belonging to co-accused Om Choudhari. It is further alleged that deceased Kishor Rathod had finalized a deal of selling of

golden chandelier to Om Choudhari worth Rs.1.5 Lakh. On 18.09.2023 at about 2.00 p.m., the informant, one Badal Neware and Kankar Lilhare met the deceased Kishor Rathod. They went on a motorbike towards Dangorli. When they reached at Dangorli near Bus stop they met also Devdip Jaitwar. It is further alleged that thereafter, Om Choudhari came there along with the other co-accused. It is further alleged that when the informant and Devdip Jaitwar were waiting under a tree while deceased Kishor Rathod went away for a while. Thereafter, they started back towards Gondia. Around 3.00 p.m., near Dangorli Bus stop, four persons on a motorbike accosted the informant, Kishor and Devdip Jaitwar and restrained them. They kicked the motorbike and caused them to fall. The four unknown persons started hitting them on the spot. Thereafter, five more persons arrived at the scene on three motorbikes. It is alleged that Om Choudhari abused the informant, deceased Kishor Rathod and Devdip Jaitwar had assaulted them. Thereafter, three persons were forcibly made to sit on a motorbike, and thereby taken to Dongargaon, Madhya Pradesh. Some more persons were also waiting nearby they too started chasing the informant and others. Upon reaching Dongargaon, the informant and deceased and Devdip Jaitwar were taken to a field wherein also they were beaten. It is specifically alleged that Om Choudhari hit deceased Kishor Rathod with a stick on his back, head, chest and legs.

Thereafter, Om Choudhari demanded an amount of Rs.10,00,000/- and told that only upon receipt of the amount that he will release the informant, deceased Kishor Rathod and Devdip Jaitwar. At the relevant time, the informant called his brother Pradip Thakarele to bring money, whereas Kishor called Atul Khobragade and Ashish Shahare. The informant came to know about the names of the assailants as they were referring each other by their names. It is further alleged that one Ajju Turkar asked Devdip Jaitwar for money and Devdip Jaitwar replied that he would pay Rs.5,000/-. Thereafter, Devdip Jaitwar and Ajju Turkar went on a motorbike and withdrawn the amount of Rs.5,000/- from an ATM. Om Choudhari and his associates again assaulted them. In the said assault the deceased Kishor Rathod died due to said injuries. On the basis of said report, police have registered the crime against the present applicants and other co-accused.

3. Learned Counsel Mr. Manohar submitted that considering the recitals of the FIR and the allegations levelled against the co-accused and present applicant only presence of the present applicant is stated and there is no specific allegation against the present applicant. He further stated that even taking into consideration the allegation as it is, the death of the deceased is due to the liver injury and small intestinal haemorrhage. At the

most, under Section 304 part II culpable homicide not amounting to murder.

4. In support of his contention he placed reliance on **Nagaraja Vs. State of Karnataka in Criminal Appeal No.2067/2008 decided on 18.12.2008, Shankar Maruti Sawant and another Vs. State of Maharashtra through PSO reported in 2020 SCC OnLine Bom 11317, Rajesh Anantram Thakur Vs. State of Maharashtra reported in 1992 Mh.L.J. 1425 and Babarao son of Namdeorao Gedam Vs. The State of Maharashtra and others reported in 1994 SCC OnLine Bom 24.** He submitted that observations in the above said judgment shows that Section 304 part II of IPC is applicable where culpable homicide not amounting to murder has been committed, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. Obviously, there could be no intention on the part of applicant either to cause death of the deceased or to cause such bodily injury as was likely to cause death. The said question has to be determined with reference the manner in which the incident started and occurred and not from the subsequent event of the death of the person or the nature of injuries which could according to the opinion of the doctor have been sufficient to cause death in the ordinary course of nature.

5. The learned Counsel further submitted by considering this aspect, this Court released the applicant on anticipatory bail in case of **Shankar Maroti Sawant** (supra) by observing that the substratum of the submission that offence punishable under section 302 IPC is not made out is predicated on the premise that the assault was by kick and fist and that there was no intention of causing death, or causing such bodily injury as is likely to cause death, or with the knowledge that the assailants are likely, by such act, to cause death. In essence, the submission is that the assailants cannot be said to have committed culpable homicide as defined in section 299 of IPC. This Court has further observed that the several other decisions are cited by the Counsel which explain the scope and ambit of section 438 of the Code of Criminal Procedure and deal with the considerations which ought to weigh with the Court while granting or refusing pre-arrest protection. In view of the settled position of law, the bail was granted.

6. Learned Counsel for the applicant submitted that similar is the case in the present case. There is no allegation that present applicant was carrying any weapon even the allegations are taken as it is, the allegation is that the deceased was assaulted by kick and fist blows which resulted into the death. At the most, case covers under Section 323 of IPC. The custodial interrogation of the present applicant is not required and

hence applicant deserves to be released on anticipatory bail.

7. Per contra, learned APP for the State vehemently submitted that considering the manner in which the alleged incident has taken place that the co-accused and the present applicant in furtherance of their common object to the deceased and informant at some place assaulted them and caused his death is sufficient to show intention and prays for rejection of the application.

8. Having heard the learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. As far as the recitals of the FIR is concerned, the sum and substance of the allegation is that the deceased was dealing with the fake gold ornaments. There was transactions between the co-accused Om Choudhari and the deceased. As far as the sale of golden chandelier is concerned, the consideration amount was also fixed. The allegation further shows that the informant along with the deceased was proceeding towards Dangorli, near gram Girola and when they returning back, they were restrained by the co-accused accompanied by the present applicant and other co-accused and they were assaulted. Subsequently, they were taken in the jurisdiction of the Madhya Pradesh wherein they were assaulted which

resulted into the death of the deceased Kishor. The postmortem report of the deceased is placed on record which shows that the deceased has sustained 15 injuries in the nature of contusion and abrasion. The cause of the death ascertained by the Medical Officer is liver injury and small intestinal haemorrhage, which shows that the present applicant was not carrying any weapon. As far as the weapon is concerned, allegation is only against co-accused Om Choudhari, who gave blow by means of stick. As per the submissions made by the learned Counsel for the applicant that at the most the case covers under Section 325 of IPC, considering the manner in which the alleged incident has taken place and there was no intention to commit the culpable homicide amounting to murder. This submission is made in the light of the observations in the various judgments.

9. The Hon'ble Apex Court in **Gokul Parashram Patil Vs State of Maharashtra** report in (1981) 3 SCC 331 in paragraphs 3, 5, 6 and 7 observed that the learned counsel for the appellant has contended that the case does not fall within the ambit of Section 302 of the Code and that the two courts below erred in relying on *Virsa Singh v. State of Punjab*. The gist of the dictum of this Court in that case is that if an injury is held to have been intended by the assailant and is further found to be sufficient in the ordinary course of nature to cause death, it would attract clause thirdly of Section 300 of the Code

and that, therefore, its author would be liable to punishment under Section 302 thereof. The question thus is whether the particular injury which was found to be sufficient in the ordinary course of nature to cause death, in the present case, was an injury intended by the appellant. Our answer to the question is an emphatic one. The solitary blow given by the appellant to the deceased was on the left clavicle - a non-vital part - and it would be too much to say that the appellant knew that the superior venacava with any decision. The fact that the venacava was cut must, therefore, be ascribed to a non- intentional or accidental circumstance. This was precisely the view taken in *Harjinder Singh v. Delhi Administration*, and in *Laxman Kalu Nikalje v. The State of Maharashtra*. In the former of these cases, the injury in question was a stab wound on the left thigh which had cut the femoral artery and vessels. In the latter, the damage caused consisted of a cut in the auxiliary (sic axillary) artery and veins. In each of the two cases it was held that although the injury which was found to be sufficient in the ordinary course of nature to cause death had resulted from a blow with a sharp-edged weapon, the same could not be said to have been intended, that the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow, that the assailant could not be held guilty of an offence under Section 302 of the Code and that he was,

on the other hand, guilty of a lesser offence falling under part II of section 304 of IPC thereof.

10. In the light of the above observations, if the facts and circumstances of the present case are considered, admittedly, there is no specific allegation against the present applicant. As far as the weapon is concerned, which is assigned to the co-accused i.e. Om Choudhari. General allegations are made against the present applicant that all the accused have assaulted the deceased by means of fist and kick blows. The postmortem report shows that death is due to the liver injury and small intestinal haemorrhage. Admittedly, intention is an inner compartment of the mind of that person. The intention of the persons can be gathered from the attending circumstances like the part chosen by the assailant for the assault the weapon used etc. At this stage, I am not intending to discuss whether the case covers under Section 302 of IPC culpable homicide amounting to murder or Section 304 of IPC culpable homicide not amounting to murder, considering the role of the present applicant, as no specific role is attributed to him, no weapon is assigned to him only allegation that he assaulted by fist and kick blows i.e. also general allegation. The custodial interrogation of the present applicant is not required and in view of that the 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 **Maheshkumar s/o Chandanlal Patle** be released on anticipatory bail in the event of his arrest in connection with Crime No.281/2023 registered with Police Station Ravanwadi, District Gondia for the offences punishable under Sections 143, 144, 147, 148, 302, 364, 386, 341, 149, 323, 504 and 506 of the Indian Penal Code, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with investigating agency.
- (iv) The applicant shall not enter in the District Gondia till conclusion of the trial.
- (v) The applicant shall not induce, threat or promise any witnesses by contacting them in any manner.
- (vi) The applicant shall furnish his cell phone number and address with the address proof.

(URMILA JOSHI-PHALKE, J.)