



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

934 ANTICIPATORY BAIL APPLICATION NO. 455 OF 2024

Vishambar Sujansingh Chitodiya

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. The Superintendent of Police

..RESPONDENTS

Advocate for Applicant : Mr. Kadam Gajanan G.
APP for Respondent/State : Ms.R.P. Gaur

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 2nd July, 2024.

P.C.:

1. The applicant apprehends arrest in connection with FIR No.272 of 2023 registered with Busawal Taluka Police Station, Bhusawal, Dist. Jalgaon, for the offence punishable under section 302 read with 34 of the Indian Penal Code (For short, "IPC").
2. It is prosecution's case that on 23rd December, 2023, at about 12 noon, dead body of one Dharmendra Mahipat Lodhi was found beneath a Nim tree in the field of Sonali Jain on Wanjola-Mirgavhan road. Accordingly, A.D. No.43 of 2023 came to be registered with Bhusawal Taluka Police Station. During investigation, it revealed that in the night between 22nd December, 2023 and 23rd December, 2023, on Bhusawal-Jamner road near B.G. Gym, Bhusawal, the applicant and co-accused assaulted the deceased presuming as a thief when he was

opening the door of car of accused no.1. They beaten up the deceased with sticks and bat on his legs, back and head. The reason of death of deceased is head injury with polytrauma. After investigating the matter, the police has registered the offence under the above sections against the applicant and co-accused.

3. It is the contention of the learned counsel for the applicant that the applicant has been falsely implicated in this case. The car which deceased had tried to open was belonging to accused no.1 – Jamerisingh. The applicant had no concerned with the said incident. The accused no.1 has taken the name of applicant due to enmity between them. The statements of the witnesses recorded by the police after 12 days of the incident. Allegations against the applicant are that he has beaten up the deceased with wooden stick on his back and legs. There was no allegations that he hit on the head on the deceased. Accused nos.1 and 2 have been released on regular bail by the trial Court. Custodial interrogation of the applicant is not required, hence requested to allow the application.

4. It is the contention of the learned APP that the applicant had beaten up the deceased with wooden stick along with co-accused. Cause of death of the deceased is head injury with polytrauma. The hotel owner – Digamber Sarode and eye witnesses and other employees of the hotel have stated before the police about the incident and they have stated that accused nos.1 and 2 along with two

unknown persons assaulted the deceased with wooden stick and bat. The learned APP further submitted that the witness Manoj Chitodiya, who witnessed the incident has stated before the police that the applicant was one of the four persons, who beaten up the deceased. After the incident, he had gone to Gujarat and after coming back, he has narrated about the incident to the police. He has no reason to implicate the applicant in the present crime. The learned APP further submitted that from contents of the F.I.R., prima facie involvement of the applicant is shown. His custodial interrogation is required and requested to reject the application.

5. I have heard both the learned counsel. Perused the F.I.R. and police papers produced on record.

6. Amol Pawar, Police Officer lodged a report stating that he received the information about lying of dead body of one person in the field of one Sonali Jain. Accordingly, he visited the place and registered A.D. He made inquiry with the various people from 23rd December, 2023 to 28th December, 2023 and in the said inquiry, he came to know that on 22nd December, 2023 around midnight 12, accused nos.1 and 2, the applicant and other co-accused assaulted the deceased with wooden sticks and bat. Thereafter, they left him. One of the witness took the deceased on other side of the road. In inquiry, the police recorded the statement of Manoj Chitodiya, who has witnessed the incident. He has stated that he saw accused nos.1 and

2, the applicant and other absconding accused were assaulting the deceased with wooden sticks on his back and legs. This witness tried to rescue the deceased from the clutches of the applicant and co-accused. This witness has stated before the police that at that time, owner of hotel "Viraj"- Digamber Sarode and one worker from hotel had been to the incident spot. This witness has further stated that on 24th December, 2023, he had gone to Gujarat for his business purpose and he returned to Bhusawal on 10th January, 2024 and on 11th January, 2024, his statement was recorded by the police. This witness is from the vicinity where the incident has happened and he knows all the people in the said vicinity. The surname of the applicant and other co-accused are Chitodiya whereas eye witness is also from Chitodiya family. It is the contention of the learned counsel for the applicant that there is delay in recording the evidence of the eye witness. I am of the view that in F.I.R. the first informant has stated that he made inquiry about the incident from 23rd December, 2023 to 28th December, 2023, the eye witness left Bhusawal on 24th December, 2023 and he returned back on 10th January, 2024. It shows that he was not available for recording his statement and immediately after returning from Gujarat, the police has recorded his statement. The cause of death of the deceased is due to head injury and polytrauma. The contents of the F.I.R. and the statements of witnesses and police papers produced on record show that there was active involvement of the applicant in the

said crime. His custodial interrogation is required, hence I pass the following order :-

ORDER

- (i) The application is rejected.

[SHIVKUMAR DIGE, J.]

sga