



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 353 OF 2023

Madan s/o Ramkrishna Jadhav,
Age 52 years, Occ. Agri.
R/o Raimoha, Tq. Patoda, Dist. Beed.
Now at r/o Baliraj Complex, Beed,
Tq. and Dist. Beed.

... Applicant
[Orig. Accused No.6]

Versus

1. The State of Maharashtra
through Police Station, Patoda,
Tq. Patoda, Dist. Beed.
2. Tukaram s/o Dnyanoba Sanap
Age 50 years, Occ. Agri.
R/o Raimoha, Tq. Patoda,
District Beed.

... Respondents
[R.No.2 Orig. Complainant]

.....
Mr. R. G. Hange, Advocate for the Applicant.
Mr. D. R. Korade, APP for Respondent No.1-State.
Mr. Avinash D. Aghav, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.11.2024
Pronounced on : 28.11.2024

ORDER :-

1. Instant application is directed against the order passed by learned Additional Sessions Judge, Beed below Exhibit 21 in Sessions Case No. 143 of 2019 dated 04.11.2023, rejecting the application for discharge.

2. Learned counsel for the applicant submits that in crime no. 45 of 2018, applicant is falsely implicated. He submits that in fact, on the date of occurrence, he was not at the spot. That, prosecution has recorded statements of seven witnesses. That, six accused are named. Learned counsel pointed out that independent witnesses do not mark presence of applicant at the spot. That, even the CCTV footage does not disclose his presence. Learned counsel took this Court through the evidence of prosecution witnesses and submits that for the first time, applicant has been named by witnesses named Ashok, Adinath, Ajinath and Sakharam but their statements under Section 161 of Cr.P.C. are recorded on 10.03.2018 i.e. after delay and as such, there is apparently false implication.

3. Learned counsel further submits that there is no material to make applicant face trial. Therefore, provisions of Section 227 of Cr.P.C. were invoked, however learned trial court failed to consider and appreciate the investigation papers as well as failed to appreciate the law to be applied while seeking discharge.

4. In support of such submissions, learned counsel took this Court through the ruling of the Hon'ble Apex Court in the case of ***Rajiv Thapar and others v. Madan Lal Kapoor*** 2023 ALL MR (Cri) 1107

(S.C.), more particularly para 20 and 26, wherein legal precedent has been considered and discussed. He also pointed out that there is cross case and as such, according to him, there is false implication, but learned trial court has not considered the same and hence he seeks indulgence at the hands of this Court by allowing the revision.

5. Opposing the above application, learned counsel for the respondent/complainant pointed out that applicant is named. There are allegations that he was armed with sword. He has inflicted blow on vital part. There is eye witness account as well as injured witness account. Even independent witnesses have named him and thus, according to him, this is not a fit case for discharge, as there is ample evidence.

6. Learned APP also opposed on above grounds by pointing out that there is sufficient material against the applicant to face trial, and hence, even according to him, it is not a fit case for discharge.

7. After considering the submissions of both sides and on going through the FIR, it seems that the occurrence had taken place on 02.03.2018. Precise case set up before this Court is that applicant was not at the spot, however, there are independent witnesses like

Sakharam. Though his statement is recorded after few days of occurrence, he has marked presence of applicant. It is also pertinent to note that applicant is specifically named in the FIR. Allegations against him are that he has used sword and blow is said to be given on the back side of head.

8. Law is fairly settled that when there is no material in spite of thorough investigation, a person should not face the ordeal of trial. Insufficiency and no evidence are the distinct features for invoking Section 227 of Cr.P.C. Here, in the light of above discussion, it cannot be said that there is no material for facing trial. The very plea of *alibi* has been taken by the applicant. Resultantly, burden is on him to prove, but at trial, and as such, he needs to face trial. For all above reasons, no case being made out for grant of relief, no interference is called for in the order passed by the trial court. Hence, following order is passed :

ORDER

The criminal revision application is dismissed.

[ABHAY S. WAGHWASE, J.]