



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.14 OF 2024

Pankaj s/o Nandlal Patle ..vs.. State of Maharashtra

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

Court's or Judge's Order

Shri A.S. Manohar, Advocate for the applicant.
Shri A.G. Mate, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 17, 2024

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

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 Thakrele, 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 Chaudhari. Deceased Kishor Rathod had finalized a deal of selling of golden chandelier (earrings) to Om Chaudhari 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 and they proceed

on motorcycle towards Dangorli. When they reached at Dangorli near bus stop, they met one Devdip Jaitwar. It is further alleged that Om Chaudhari came there along with the other accused and co-accused where 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. As per the allegations Om Chaudhari abused the informant, deceased Kishor Rathod and Devdip Jaitwar and also assaulted them. Thereafter, three persons were forcibly made to sit on a motorbike and taken to Dongargaon, Madhya Pradesh. Some more persons were also waiting nearby who also started chasing the informant and others. Upon reaching Dongargaon, the informant and the deceased and Devdip Jaitwar were taken to the field wherein also they were also assaulted. It is specifically alleged that Om Chaudhari hit deceased Kishor Rathod with a stick on his back, head, chest and legs. Thereafter, he demanded an amount of Rs.10,00,000/- and told that only upon receipt of the amount, he will release the informant, deceased Kishor Rathod and Devdip Jaitwar. At the relevant time, the informant called his brother Pradip

Thakrele to bring money, whereas Kishor called Atul Khobragade and Ashish Shahare. The informant came to know about the names of assailants as they were referring each by their names. It is alleged that one Ajju Turkar asked Devdip Jitwar for money and Devdip Jaitwar replied that he would pay Rs.5,000/-. Thereafter, Devdip Jaitwar and Aajju Turkar and went on a motorbike and withdrawn the amount of Rs.5,000/- from an ATM. Om Chaudhari and his associates again assaulted him. In the said assault, the death of deceased Kishor Rathod is caused due to the said injuries. On the basis of the said report, police have registered the crime.

3. Learned Counsel Mr. Manohar for the applicant submitted that considering the recitals of the FIR, the allegations levelled against the co-accused and the presence of the present applicant is only stated and no overt act is attributed. There is no specific allegation against the present applicant. The co-accused with the similar allegation is already released on bail by this Court in the event of his arrest. 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, the act is covered under Section 304 part II of culpable homicide not amounting to murder.

4. He further submitted that this Court after considering the settled law released the co-accused on

bail, the role of the present applicant is similar to them. In view of that, on the ground of parity also the present applicant is to be released on bail. He further submitted that this Court released the applicant on anticipatory bail in view of the judgment of ***Shankar Maruti Sawant and another vs. State of Maharashtra through PSO 2020 SCC OnLine Bom 11317***, 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 assailant are likely, by such act, caused 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.

5. He further submitted that there is no allegation that present applicant was carrying any weapon even the allegations are taken as it is, the allegation is that deceased was assaulted by kick and fist blows which resulted into the death. At the most, case covers under Section 323 of the IPC. The custodial interrogation of the present applicant is not required and he be released on

anticipatory bail.

6. On the other hand learned APP for the State strongly opposed the application and 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 assaulted the deceased and the informant, caused his death sufficient to show the intention and prays for rejection of the application.

7. After hearing both the sides and perusal of the investigation papers, there is no dispute as to the fact that the co-accused with the similar allegation is already released on bail. 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 and there was transaction between the co-accused Om Chaudhari and the deceased. The only allegation against the present applicant is that he was along with the co-accused and no overt act is attributed against the present applicant. Admittedly, the co-accused with the similar allegation is already released on anticipatory bail. On perusal of the FIR and the investigation papers, if the facts and circumstances of the present case are considered, admittedly, general allegations are made against the present applicant. No specific role or no weapon is attributed to the present applicant. In view of the above, the application deserves to be allowed by imposing certain

conditions. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) In the event of arrest, applicant – Pankaj s/o Nandlal Patle in connection with Crime No.281/2023 registered at Police Station Rawanwadi, District Gondia for the offence punishable under Sections 143, 144, 147, 148, 302, 364, 386, 341, 323, 504 and 506 read with Section 149 of the Indian Penal Code, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a week i.e. on every Sunday between 10.00 a.m. and 01.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)