



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

CRIMINAL APPLICATION (ABA) NO.17 OF 2024

Nitin s/o Vasudeo Thakre

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. A. S. Manohar, Advocate for applicant.

Mr. A. G. Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 12/01/2024

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, 120-B, 364, 386, 341, 323, 324, 294, 504 and 506 read with Section 149 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 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, Madhaya 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 Thakarele 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 and the allegations levelled against the co-accused, the presence of the present applicant is only stated and there is no overt act 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 heamorrhage. At the most, the act cover under Section 304 part II 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** reported in **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. 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 assaulted the deceased and the informant and caused his death sufficient to show the intention and prays for rejection of the application.

7. Having heard learned Counsel for the applicant and learned APP for the State. Perused 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 transactions between the co-accused Om Chaudhari and the deceased. The deceased had been to the spot of incident to obtain the fake gold i.e. golden earrings and the consideration amount was also fixed. The allegation further shows that informant

along with the deceased was proceedings 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 also 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 contusions and abrasions. The cause of death ascertained by the Medical Officer is liver injury and small intestinal heamorrhage. The investigation papers shows that present applicant was not carrying any weapon. As far as the weapon is concerned, allegation is only against the co-accused Om Chaudhari, who gave a blow by means of a stick. As per the submission of the learned Counsel for the applicant at the most, the case covers of Section 325 of IPC, considering the manner in which the alleged incident has taken place.

8. 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.

9. In the light of the above observations, if the facts and circumstances of the present case are considered, admittedly, general allegations are made against the present applicant. Neither any weapon nor any specific role is attributed to the present applicant and general allegations are made against him. The death of the deceased is due to the injury to the liver and small intestinal heamorrhage. Admittedly, the intention is an inner compartment of the mind of that person and it can be gathered from the attending circumstances like the part chosen by the assailant for the assault and the weapon used. At this stage, I am not intending to discuss whether the case covers under Section 302 of IPC attracting culpable homicide amounting to murder or culpable homicide not amounting to murder. Considering the role of the present applicant to whom no specific role or no overt act is attributed, no weapon is assigned, only allegation that he assaulted by fist and kick blows, 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 **Nitin s/o Vasudeo Thakre** 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, 120-B, 364, 386, 341, 323, 324, 294, 504 and 506 read with Section 149 of the Indian Penal Code, on executing PR 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 month on first of every month and the Investigating Officer shall record his presence.
- (iv) The applicant shall not enter in the District Gondia, till the culmination of the trial.
- (v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- (vi) The applicant shall furnish his cell phone number and address with address proof where he would reside after passing of this order.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)