



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

CRIMINAL APPLICATION (BA) NO.29/2024

Rupesh s/o Suresh Sarkate

...Versus...

State of Maharashtra, Through Police Station Officer, Police Station Patur, Distt.
Akola

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

Court's or Judge's orders

Mr. S.V. Sirpurkar, Advocate for applicant
Mrs. S.S. Jachak, Addl. PP for non-applicant

CORAM : AVINASH G. GHAROTE, J.

DATE : 08/02/2024

1. Heard Mr. S.V. Sirpurkar, learned counsel for the applicant and Mrs. S.S. Jachak, learned Additional Public Prosecutor for the non-applicant.
2. The applicant has been accused for the offence punishable under Sections 302, 304, 307, 143, 146, 147, 148, 149, 324, 323, 504, 506 of Indian Penal Code. The incident is dated 28/05/2020 when there was a quarrel between Jayabai Vishram Sarkate and Manda Sonu Telgote, when both of them along with others were at the public tap, for the purpose of filling in drinking water, in which when Smt. Manda Sonu Telgote, who was later in point of time in the queue, had sought to fill in the water, her can was thrown away by Jayabai,

which resulted in a brawl, at which time one Akash Sarkate came there at the instance of Nisha Wankhade and assaulted Vijaymala on the head by a water utensil (Gund) lying nearby, as a result of which, she started bleeding. When the altercation was going on Akash took out a knife from his pocket and assaulted Vijayamala on the hand. At that time, the applicant along with other persons came running to the spot and the applicant is said to have assaulted one Balu Sadashiv Mohade on the head by a wooden stick, as a result of which, he fell down and the other persons present there, namely, Akash Ashok Wankhade and Jyoti Rupesh Sarkate assaulted Balu Mohade on his head, back and legs. This is the allegation, insofar as the present applicant is concerned.

3. All the other persons, who were involved in the brawl, are stated to have been released on bail.

4. The applicant had earlier applied for bail in this Court vide Criminal Application (BA) No.1003/2020, which came to be withdrawn with liberty to file after one year. Subsequently Criminal Application (BA) No.1301/2021 came to be filed, which also stood withdrawn with liberty to move after six months, as the Court was not inclined, by the order dated 23/03/2022, in which, it was also directed that in the meantime the learned Sessions Court shall ensure that there is some progress in the trial. Criminal Application (BA) No.1244/2022 again was filed, which also stood dismissed by the order dated 21/03/2023, considering that the delay in trial

was on account of the accused persons, who were remaining absent, as a result of which, the charge was not being framed. It was also considered that the assault by the applicant on the head of deceased Balu Mohade was reflected from the statement of eyewitnesses Shamsheer Khan Daulat Khan and Ashabai Kamble and the post mortem report gave the cause of death due to injuries on the head.

5. The present application has again been filed for bail on the ground that no noticeable progress has been made in the trial.

6. Mrs. Jachak, the learned Additional Public Prosecutor, upon instructions, makes a statement that the trial Court has framed the charge on 17/10/2023 and opposes the grant of bail on the ground that this is the fourth bail application and the trial has already commenced.

7. It is contended by Mr. Sirpurkar, learned counsel for the applicant that the assault on the head of the deceased Balu Mohade is not only by the present applicant but also by other persons namely Akash Wankhade and Jyoti Rupesh Sarkate, both of whom have been released on bail. He, therefore, submits that on account of the delay in the trial and the above position the applicant would be entitled to bail.

8. The incident is dated 28/5/2020. The applicant was arrested on the same day. As indicated above, the bail applications filed by him from time to time have been rejected by this Court. A considerable time of more than three and half

years has passed, without the trial proceeding in any substantial way. It has been stated that the charge has been framed. The delay in the trial, cannot always be the reason, to enlarge an accused on bail.

9. A perusal of the statements of Shamsher Khan Daulat Khan (pg.112) and Smt. Ashabai Vipin Kamble (pg.108) would indicate that an assault by a stick by the present applicant on the head of the deceased Balu Mohade is attributed to him, which is reported to be the cause of death, in view of the post mortem report (pg.85).

10. Though it is true that these statements also indicate that Akash Wankhade and Jyoti Rupesh Sarkate had also assaulted Balu Mohade on his eyes, back and legs, there is no assault attributed to them, to the head, assault on which is a claim to be the direct cause of death. I, therefore, do not see any material brought to my notice, to reconsider the view, which I have already taken earlier. The criminal application is, therefore, rejected.

(AVINASH G. GHAROTE, J.)