



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

CRIMINAL APPLICATION (BA) NO. 36/2024

Sohail @ Annu @ Maya Pyare Sheikh V/s 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

Mr. C.R.Thakur, counsel for the applicant.
Mr. V.A.Thakare, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/02/2024.

1. The application is filed by the applicant for grant of bail, in connection with Crime No. 458/2023, registered with Kalamna Police Station, Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860. The applicant came to be arrested on 12/06/2023.

2. The accusation against the present applicant is on the basis of report lodged by Satish Rajaram Thakre, on an allegation that during the intervening night on 11/06/2023 to 12/06/2023, the deceased namely Aatish Thakare was killed by the present applicant and other co-accused assaulted by means of stone.

3. As per the allegation in the report, the deceased was taken from his house by the co-accused and thereafter, he did not return back on the next date and his dead body was found. The deceased had sustained severe injuries all over the body on the basis of said report, the police have

registered the crime against the co-accused. During the investigation, the involvement of the present applicant is also revealed and therefore, the applicant is arrested. The statement of the present applicant is recorded under Section 26 of the Indian Evidence Act 1872 in the nature of the confessional statement.

4. Learned counsel for the applicant submitted that the entire case is based on circumstantial evidence, and the only circumstance which appears against the present applicant is that his confessional statement. The confessional statement before the police is not admissible and therefore, there is absolutely no evidence against the present applicant to show his involvement in the alleged offence. The recitals of the First Information Report and the statement of the witnesses also shows that it was the co-accused namely Aasif Ali and Rahul Bagde were seen lastly with the deceased. None of the witnesses disclosed the presence of the present applicant along with the deceased either prior to the incident or after the incident near the spot of the incident. In view of that, as there is no prima-facie material, the applicant be released on bail.

5. Learned APP strongly opposed the application on the ground that besides the confessional statement of the present applicant, the Instagram Call by the present applicant to the co-accused shows that he was also present at the time of the incident from which, the involvement of the present applicant reveals. Thus, there is a prima facie case and the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers. Admittedly, the confessional statement of the present applicant before the Police is hit by Section 26 of the Indian Evidence Act, 1872. Besides the confessional statement, the only circumstance which the prosecution relied upon is the Instagram Call which is not sufficient to show his presence at the spot of the incident. Admittedly, the statements of the witnesses disclosed only the presence of the co-accused along with the deceased. Thus, at this stage, the applicant has made out the case to release him on bail.

7. Considering the nature of evidence collected during the investigation against him. Now, the investigation is also completed and charge-sheet is filed. In view of the facts and circumstances of the case, application be allowed. Accordingly, I proceed to pass the following order.

- a) The criminal application is **allowed**.
- b) The applicant -Sohail @ Annu @ Maya Pyare Sheikh, is released on bail, in connection with Crime No. 458/2023, registered with Police Station Kalamna, District Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c) The applicant shall not leave the jurisdiction of Kalamna, Nagpur without prior permission of the court.
- d) The applicant shall furnish his cellphone number (s) and address with address proof before the investigating officer.
- e) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f) The applicant shall attend the proceedings before the learned trial Court without seeking exemption unless there are exceptional circumstances.

The criminal application is **disposed of**.

[**URMILA JOSHI-PHALKE, J.**]