



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

CRIMINAL APPLICATION (BA) NO.62 OF 2024

Rahul s/o Jagdish @ Ranibhai Nishad

Vs.

State of Maharashtra, Through Police Station Officer Ballarpur,
District Chandrapur

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

Court's or Judge's orders

Mr. M. V. Rai, Advocate for applicant.

Ms. R. V. Sharma, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13 /03/2024

1. The applicant came to be arrested on 17.06.2023 in connection with Crime No.576/2023 registered under Sections 302, 143, 147, 148 read with Section 149 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Prakash Kaithwas, who alleged that on 15/06/2023, there was some quarrel between the deceased Deepak Kaithwas and the co-accused Gaurav Lidbe, Arjun Kaithwas, Pratham Patil and Pratham Patil. Initially, there was friendship between them, but some discord was there and therefore, there was a rivalry. On 14/06/2023 at about 8.00 p.m., his brother informed him that the quarrel took place between the deceased and Arjun Kaithwas and he gave an understanding to Arjun Kaithwas. Thereafter, the deceased went out of the

house and not returned back. During investigation, it revealed that it was the present applicant and other co-accused who followed the victim and assaulted him by means of fist and kick blows as well as by the stone, due to which, he sustained grievous injuries and succumbed to the death. On the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the alleged incident is concerned, the name of the present applicant is not mentioned in the FIR. During investigation, his name was revealed. The entire case is based on the statement of single eye witness Sushil @ Bhurya Mohan Singarvar, who attributed and made general allegation against the present applicant that he has assaulted along with the other co-accused by fist and kick blows and by pelting stones. Now, the investigation is completed and charge-sheet is filed. The co-accused with the similar role is already released on bail and therefore, on the ground of parity also present applicant shall be released on bail.

4. Learned APP strongly opposed the application on the ground that there is a *prima facie* material against the present applicant. The act executed by the co-accused and the present applicant in furtherance of their common intention, considering the role attributed to the present

applicant, *prima facie* case is made out and the application deserves to be rejected.

5. After hearing the learned counsel for the applicant and learned APP for the State, perused the investigation papers. Admittedly, there was a previous enmity between the deceased and the co-accused. As far as the present applicant is concerned, his name is not mentioned in the FIR. During the statement of eye witness, the name of the present applicant was revealed. The statement of the eye witness is recorded under Section 161 as well as 164 of Cr.P.C. Though the eye witness has given lengthy statement under Section 164 of Cr.P.C. but as to the role of the present applicant, general allegation is made that he along with the co-accused have assaulted the deceased by means of stone and cement pipe. The postmortem report shows that the deceased has sustained in all 10 injuries which are in the nature of lacerated wound and the death of the deceased was due to head injury. Admittedly, the head injury is not attributed to the present applicant. The co-accused with the similar role is already released on bail and therefore, the ground of parity is available to the present applicant.

6. Considering the ground of parity and considering the fact that the co-accused to whom the similar role is attributed is already released on bail, investigation is already completed and charge-sheet

is filed, the prayer of the present applicant for grant of bail deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant - **Rahul s/o Jagdish @ Ranibhai Nishad** be released on bail in connection with Crime No.576/2023 registered under Sections 302, 143, 147, 148 read with Section 149 of the Indian Penal Code, on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.
- (iii) The applicant shall not enter into the vicinity of Ballarpur, within the jurisdiction of Ballarpur Police Station, Dist. Chandrapur, till culmination of trial.
- (iv) The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.
- (v) The applicant shall attend the Court proceedings regularly without seeking any exemption, unless there are exceptional circumstances.
- (vi) The contravention of any condition imposed on the applicant would result into cancellation of bail.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)