



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

CRIMINAL APPLICATION (BA) NO. 99/2024

Anand S/o Namdeo Patil

Vs.

**State of Maharashtra, Through P.S.O., Bela, Tah. Bhiwapur, Dist.
Nagpur**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. N.B. Rathod, Advocate for Applicant
Mr. Neeraj Jawde, AGP for Non-applicant / State

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 19th MARCH, 2024

The applicant came to be arrested on 28/07/2023 in connection with Crime No. 250/2023, registered with Police Station Bela, District Nagpur under Sections 302 and 326 R/w 34 of the Indian Penal Code.

2. The accusations against the present applicant is on the basis of the report lodged by one Rohit Randhir Shambharkar, who is the nephew of the deceased. As per the allegations, on 28/07/2023 at about 10:00 AM, when deceased was proceeding towards the village, the present applicant and other two accused were standing on the cement road, at the relevant time, co-accused Prajwal More asked the deceased why he is

defaming them by saying that there is an illicit relations between his wife and them. On that count, there was a scuffle between them and the present applicant and co-accused assaulted his uncle by means of wooden log, due to which, the deceased sustained grievous injuries and subsequently succumbed to death. On the basis of the said report, police have registered the crime against the present applicant.

3. The learned counsel for the applicant point out from the statement of the informant and other witnesses that the deceased was addicted to liquor, he was suspecting character of his wife and seducing the accused namely Prajwal More by saying that his mother eloped with one Naresh. The learned counsel further point out from the statement of the wife of the deceased and brother of the deceased that the deceased was in habit of picking up quarrel with the villagers and was also ill-treating his wife by suspecting her character. He also point out from the statement of Police Patil – Pandurang Nakade that at the time of incident, he had received the phone call of co-accused, who disclosed that the deceased had picked up quarrel with them and he should come immediately, but before he reached there, the deceased had sustained injury and was lying on the spot. He

submitted that considering the circumstances under which the alleged incident had took place from which, it reveals that the case covered under explanation 1 and explanation 4 i.e. when the culpable homicide is not murder. He also pointed out from the post-mortem report that at the relevant time, the deceased was under the influence of liquor. On the basis of the submissions, he submitted that considering the circumstances under which the alleged incident took place from which there was no intention or motive to commit murder of the deceased revealed, but whatever happened is sudden quarrel and due to provocation at the hands of the deceased. In view of that, he be released on bail.

4. The learned APP for the State strongly opposed the said application on the ground that considering the injury sustained by the deceased, which are 14 in numbers shows that the deceased was assaulted by the present applicant and other co-accused with an intention to commit his murder. The injuries sustained by the deceased are on the vital parts of the body. The statement of the informant, who was also the eye witness of the incident sufficiently shows that the quarrel was initiated by the co-accused Prajwal More and, therefore, the defence of sudden fight, quarrel and

giving provocation is not available to the present applicant, in view of that, the application deserves to be rejected. He further submitted that considering the gravity of the offence for which punishment of life imprisonment is provided, moreover, all the witnesses are from the same village and if the applicant is released on bail, he would tamper the prosecution evidence and, therefore, application deserves to be rejected.

5. Having heard the learned counsel for the applicant and learned APP for the State. Perused the investigation papers. From the recitals of the First Information Report, it reveals that when the deceased was proceeded towards village at that time, there was hot exchange of words between co-accused Prajwal More and deceased as the said co-accused asked the deceased why he is defaming them by saying that they are having illicit relations with his wife. The said contention is also substantiated by the statement of the wife, who in her statement stated that the deceased used to suspect her character by saying that she is having illicit relations with the present applicant and one Prajwal More. The statement of the informant as well as the brother of the deceased also substantiated the fact that the deceased used to suspect the character of the wife and on the

earlier date, he has assaulted his wife and, therefore, she approached to Police Patil. The statement of Police Patil, namely Pandurang Nanaji Nakade also shows that he received the phone call of one of the accused, who disclosed that the deceased has initiated the quarrel with them and, therefore, he should come there.

6. The fact regarding suspicion by the deceased on his wife is also substantiated by Police Patil, who stated that on the earlier date wife of the deceased approached to him and disclosed that the deceased is suspecting her character saying that she is having illicit relations with the present applicant and other co-accused. From the recitals of the FIR, it nowhere shows that the present applicant and co-accused have prepared and by holding any weapon in their hands standing, they were standing on the spot and statement of the informant only states that they were standing on the cement road and hot exchange of words. This is sufficiently shows that as the deceased was suspecting the character of his wife by saying that she is having illicit relations with the present applicant and other co-accused, there was hot exchange of words between them, which resulted into sudden quarrel between them. It is also apparent from the investigation papers that the

deceased provoked the present applicant by alleging he has illicit relations with the present applicant and, therefore, the alleged incident had took place. The statement of Police Patil is also substantiated by CDR report, which shows that Police Patil had received a phone call on his mobile at about 10:50 AM

7. Considering the circumstances under which the alleged incident had took place which sufficiently shows that there was a provocation and due to provocation also the incident of hot exchange of words had took place and in the said incident, the deceased was assaulted by the present applicant and other co-accused. From the entire investigation papers it nowhere revealed that the present applicant and co-accused had assaulted the deceased with an intention on their part to commit murder of the deceased. From the circumstances and from the investigation papers, it appears that the alleged incident had took place suddenly due to grave and sudden provocation on the part of the deceased and, therefore, the applicant against whom the allegation having illicit sexual relations with the wife of the deceased is levled by the deceased, the deceased was assaulted and in the said incident his death was occurred. Now the investigation is completed,

charge-sheet is filed. Considering that there are no criminal antecedents, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I pass the following order.

ORDER

- I. Application is allowed.
- II. The applicant shall be released on bail in connection with Crime No.250/2023 registered with Police Station Bela, District Nagpur on executing PR bond of Rs.30,000/- and surety in the like amount;
- III. The applicant shall attend the concerned Police Station once in a month on Sunday between 10:00 AM to 1:00 PM and the Investigating Officer shall record his presence;
- IV. The applicant shall not enter into village Chikhlapar, Tah. Bhiwapur, District Nagpur, till culmination of the trial;
- V. The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the case in any manner.

7. The learned trial Court shall not be influenced by the observations made by this Court which are only for the purpose of bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

MP Deshpande