



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

CRIMINAL APPLICATION (BA) NO.164 OF 2024

(Kshitij Milind Dange (In Jail) Vs. The State of Maharashtra thr. PSO PS Ajni, Nagpur)

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

Court's or Judge's orders.

Mr. Z. Z. Haq, Advocate for Applicant.
Mr. U. R. Phasate, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 28th MARCH, 2024.

Heard.

2. The applicant came to be arrested on 12.01.2023 in connection with Crime No.35/2023 registered with Police Station Ajni, Nagpur for the offence punishable under Sections 143, 145, 147, 148, 149, 302, 323, 504 and 506 (2) of the Indian Penal Code and with Section 4 and 25 of the Arms Act.

3. The accusation against the present applicant is on the basis of report lodged by one Sarita Raju Khobragade who alleged that she was having a love affair with the deceased Vicky Chandel since last two years. The said Vicky Chandel was in jail for the offence of murder. On 26.12.2022 she received a phone who call from deceased who called her to meet him. On 11.01.2023 at about 08:00 p.m. she went along with her friend to meet

the deceased therefore, she went to meet the deceased at one Pan Stall near Narendra Nagar ground at the said place the deceased asked Rs.100/- from her to buy cigarette. She handed over the amount to the deceased who went to buy cigarette from the said Pan Stall near public toilet. At that time two other persons started abusing and assaulting the deceased, the deceased fell on the ground. Thereafter the co-accused Rakesh Pali and other 2-3 persons arrived there and all the accused are assaulted the deceased. In the said incident present applicant was also present and he has also sustained the injuries on his back due to the blow by scissor. In the said incident the death of the deceased Vicky was caused due to the assault on his head. On the basis of said report police have registered the crime against the present applicant.

4. The learned counsel for the applicant Mr. Haq submitted that as far as the statement of the informant is concerned no overt act is attributed to the present applicant. On the contrary, the present applicant has sustained the injury as he was assaulted by the informant. He submitted that at the most the presence of the applicant is noted at the spot of incident and one general allegation is that he has also assaulted the deceased by means of wooden log. He further invited my attention to the statement of the informant recorded under Section 164 of the Code of Criminal Procedure and submitted that in the said statement which was recorded subsequent in time attributes

no overt act to the present applicant. Now investigation is completed, charge-sheet is filed, no weapon is recovered at the instance of the present applicant, considering the same he be released on bail.

5. The learned APP strongly opposed the said application on the ground that the CCTV footage is collected during the investigation wherein the role of the present applicant is crystal clear, he further submitted that the informant has also narrated the role of the present applicant who was present there and had assaulted the deceased by means of wooden log. He submitted that the death of the deceased is caused due to the head injury it was the act committed by the present applicant and the other co-accused in furtherance of their common object. He submitted that considering the nature and the circumstances under which the alleged incident has taken place, the gravity of the offence and the availability of the applicant at the time of trial, the application deserves to be rejected.

6. After hearing the learned counsel for the applicant and learned APP for the State, perused the investigation papers, the report is lodged by the informant who is the friend of the deceased having love affair with the deceased, she is the eye witness of the incident, as far as the role of the present applicant her statement shows that the present applicant was present at the spot of incident and she is the witness of the incident and role attributed by her to the

present applicant is only to the extent the applicant was holding wooden log in his hand. As far as the assault by the present applicant is concerned, general statement is made in the first statement that present applicant has also assaulted the deceased. The death of the deceased is caused due to the head injury, admittedly the said head injury is attributed to the co-accused Rakesh Pali, the statement of the informant and other witnesses are also recorded under Section 164 of the Code of Criminal Procedure in the statement under Section 164 of Cr.P.C. the informant has not attributed any specific role to the present applicant, she has only stated that 2-3 persons were assaulted the deceased by means of wooden log. The statements of Abhishekh Sanjay Chaudhari and Ankush Krupashankar Mishra also not attributed any specific role to the present applicant only his presence is narrated by them. Admittedly the death of the deceased is caused due to the head injury, the head injury is attributed to the co-accused Rakesh Pali and Shubham Arun Kokas, the CCTV footage *panchnama* also shows that Shubham Arun Kokas and Rakesh Pali were assaulting the deceased and other 2-3 persons were also seen to assaulting the deceased. In the said incident the present applicant has also sustained the injuries on his back due to the blow by the scissor. As far as the presence is concerned which is not in dispute however, considering the statement of the witnesses, general role is attributed to the present applicant by making general statement, no weapon is recovered at the instance of the

present applicant only one motorcycle on which he came at the spot of incident is seized at his instance. Now investigation is completed, charge-sheet is filed as far as the further incarceration of the present applicant is concerned which is not required considering his role. There is no dispute as to the nature of the offence which is grievous in nature, however, considering the role of the present applicant and no overt act is attributed to him and now investigation is completed charge-sheet is filed. There are no criminal antecedents, considering all these facts, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

- [i] The application is allowed.
- [ii] The applicant – Kshitij Milind Dange shall be released on bail in connection with Crime No.35/2023 registered with Police Station Ajni for the offence punishable under Sections 143, 145, 147, 148, 149, 302, 323, 504 and 506 (2) of the Indian Penal Code and with Section 4 and 25 of the Arms Act on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- [iii] The applicant shall attend the concerned

police station on 1st of every month till culmination of the trial.

[iv] The applicant shall not leave the jurisdiction of the Nagpur City without prior permission of the District Court.

[v] The applicant shall attend the dates of proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

[vi] The applicant shall not induce and threat or promise to any person acquainted with the facts of the present case.

7. The application is disposed of.

JUDGE