



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

CRIMINAL APPLICATION (BA) NO.204 OF 2024
(Rajesh s/o Abhimanyu Yesansure Vs. 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. A.C. Jaltare, Advocate for the applicant.
Ms R.V. Sharma, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 10, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 16/08/2023 in connection with Crime No.402/2023 registered with Police Station Chandur Railway, District Amravati for the offence punishable under Sections 302, 143, 147, 148 read with Section 149 of the Indian Penal Code.

2. The accusation against the applicant is on the basis of report lodged by son of the deceased namely Ujwal Ramesh Meshram alleging that on 14/08/2023, the father of the complainant had gone to Crusher by informing that he will return after some time but he did not returned, therefore, on the next day at about 11.00 a.m. in the morning, the informant went to see his father and seen his dead body in the agricultural field. He saw that his father was lying in the pool of blood. On the basis of said report, police have registered the crime against the

unknown persons. During investigation, it revealed to the investigating agency that the deceased has promised the present applicant and other co-accused that he is able to create a rain of money but he could not do so, and therefore, the accused got annoyed and there was hot altercation of the words between them and deceased was killed by the present applicant and other co-accused by hatching the conspiracy. After due investigation the charge-sheet is filed against the present applicant along with other co-accused.

3. Learned Counsel for the applicant submitted that entire case is based on the circumstantial evidence. The circumstances on which the prosecution relied upon is the seizure of the vehicle, said vehicle bearing No. MH-40-BL-3262 owned by brother of Denny Ramesh Bobade was seen by the two witnesses at the spot of incident in the intervening night of 14/08/2023 to 15/08/2023, CDR reports showing the communication between the present applicant and other co-accused. The seizure of the cloths at the instance of the present applicant. He submitted that even if the circumstances are taken into consideration which would not lead to the conclusion that the applicant is guilty of the offence. He submitted that considering the fact that the applicant is the driver of the Car bearing No.MH-40-BL-3262 as witnessing the car by the witnesses at the spot of incident cannot be the incriminating circumstance as the applicant may have taken the persons in his car but it is not sufficient to show that he was

involved in the said crime. He submitted that considering now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the deceased found died in the tin shade in his agricultural field on the second day i.e. on 15/08/2023. As per the recitals of the FIR deceased has left the house that he is proceeding towards the Crusher and will be back within two hours but he has not returned back. Therefore, on the next day the informant visited the tin shade in the agricultural field and found the dead body of the deceased lying in the said tin shade. During investigation, the Investigating Officer has seized the said Car on 19/08/2023. The statements of two witnesses are recorded which suggest that in the intervening night of 14/08/2023 and 15/08/2023 they have seen the car bearing No.MH-40-BL-3262 at about 11.30 p.m. near the tin shade where the deceased was found dead. It is also stated by these witnesses that they were knowing that he is involved in the activities like black magic, and therefore, they have ignored the said facts of witnessing one car near the tin shade. She further submitted that the statement of the brother of the owner of the car also shows that the present applicant had been to Chandur Railway without informing him. She submitted that during investigation the call records i.e. CDR reports are also collected which also shows the

communication between the present applicant and other co-accused. Thus, there is *prima facie* material to connect the present applicant with the alleged offence.

5. Having heard the learned Counsel appearing for the parties. Perused the investigation papers. Admittedly, the FIR is registered against the unknown persons. During the investigation, the involvement of the present applicant is revealed to the Investigating Officer. During investigation the Investigating Officer has seized the car as well as the cloths of the present applicant. Admittedly, no blood stains are found in the car or on the cloths of the present applicant. However, the statement of the brother of the owner of the car shows that the car bearing No.MH-40-BL-3262 is owned by his brother Anand Ramesh Bobade and on 14/08/2023 at about 9.00 p.m. he has checked the tracker and at that time he seen the location of the car at Wardha road therefore, he called the present applicant and the present applicant disclosed to him that he proceeding towards the Chandur Railway. He has not informed before proceeding towards the Chandur Railway to the said witness. The said car is also witnesses by the two witnesses near the of incident where the dead body of the deceased was found. The CDR reports are also on record which also shows the communication between the present applicant and other co-accused. The statement of the informant also shows that when he saw the dead body he seen the injury on the head of the deceased. The postmortem report also shows

that there were three injuries on the person of the deceased which are mentioned in the column No.17. The internal injuries which are mentioned in the postmortem report shows multiple extradural and subdural hematomas were present. Brain looks congested, edematous. Thus, the death of the deceased is caused due to the head injury. Admittedly, the entire case is rested upon the circumstantial evidence and three circumstances which *prima facie* shows the involvement of the present applicant with the alleged offence.

6. Learned Counsel for the applicant seeks parity on the ground that one of the co-accused Mayur Pramod Mamelwar is released on bail by this Court. Admittedly, the role of the co-accused who is released on bail and the present applicant is different one. The only circumstance available against the co-accused who released on bail are the CDR reports but here the circumstances which *prima facie* shows the involvement of the present applicant, and therefore, the ground of parity is not available to him. Considering the *prima facie* case on the basis of the circumstances the applicant has not made out a case for grant of bail. In view of that, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)