



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

CRIMINAL APPLICATION (BA) NO. 265 OF 2024

Dadaya @ Praful s/o Waman Kukde 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. S.P. Bhandarkar, counsel with Mr. Atharva Khadse with Mr. Abhijeet Ganguly, counsels for the applicant.

Mr. D.V. Chauhan, Public Prosecutor with Mr. A.B. Badar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/04/2024.

1. The applicant came to be arrested on 11/09/2023, in connection with Crime No. 404/2023 registered with Police Station Rajura, Tah. Rajura, District Chandrapur for the offence punishable under Sections 302, 307, 120(B) read with Section 34 of the Indian Penal Code, 1860; Sections 3 and 25 of the Arms Act, 1959; and Section 135 of the Maharashtra Police Act, 1951.

2. The accusation is against the present applicant on the basis of an investigation carried out by the investigation officer. During the investigation, it revealed to the investigating officer that there was a continuous call between the present applicant and the other co-accused on the day of the incident i.e. on 23/07/2023. As per the allegation in the FIR, the crime is registered on the basis of report lodged by Mrunal Rajendra Dohe, who alleged that on 23/07/2023 when he was present in the house, at that time, his sister-in-law Purvasha and his mother were at home. She heard the

noise of cracking of the crackers and therefore, he came out of the house and saw that, two persons came on two wheelers and fired a bullet. In the said incident, one prosecution witness – Nalini sustained the injuries. On the basis of said report, police have registered the crime against the co-accused Labjoytsingh Deol and child in conflict with law. During the investigation, the investigating officer has collected the call records i.e. CDR reports. From which, it reveals that there was a continuous call between Labjoytsingh Deol and the present applicant on 23/07/2023 from 08:31:17 to 08:39:14. On the basis of which, the investigating officer come to the conclusion that the present applicant is involved in the criminal conspiracy. In pursuance of the said criminal conspiracy, the crime was committed by the co-accused Labjoytsingh Deol by firing a bullet on the person of the deceased as well as an injured Lalli.

3. Learned counsel Mr. S.P. Bhandarkar for the applicant submitted that as far as the allegation against the present applicant in the criminal conspiracy is concerned, except the CDR Report, there is no other material to connect the present applicant. He submitted that none of the witnesses have stated any association with the present applicant by the co-accused. The only linkage which is tried to be established for involvement of the applicant in the alleged offence is the CDR Report, which indicates the continuous call between the present applicant and the co-accused. He placed reliance of the order of this Court in **Criminal Application (BA) No. 311/2022 decided on**

27/04/2022 and the decision of *Delhi High Court in the case of Deepak Nagiya vs State (NCT of Delhi) reported in 2023 SCC OnLine Del 5641*.

4. Learned Public Prosecutor strongly opposed the said application on the ground that from the continuous call between the present applicant and the other co-accused, which is sufficiently shows the involvement of the present applicant in the alleged offence. Thus, *prima-facie* case is made out against the present applicant, the bail application deserves to be rejected. Learned Public Prosecutor further submitted that the observation of this Court in criminal application (BA) No. 311/2022 are considering the facts of that case.

5. After hearing learned counsel for the applicant and learned Public Prosecutor for the State, perused the investigation papers. Admittedly, the name of the present applicant is not mentioned in the FIR. I have also perused the various statements recorded during the investigation. Admittedly, none of the witnesses have stated about the association of the present applicant with the co-accused, who have executed the act to eliminate the deceased, including the eye-witnesses of the said incident. Admittedly, the presence of the present applicant was not there, at the time of the alleged incident. The only allegation of prosecution is that the present applicant was a member to the criminal conspiracy, which was hatched to eliminate the deceased.

6. Here in the present case, the deceased Purvasha is the sister-in-law of the informant. From the statement of the witnesses, it reveals that there was a previous enmity between one Lalli who is injured in the said incident, and the co-accused, who is already arrested and executed the act of eliminating the deceased by firing the bullet, namely Labjyotsingh Hardevsingh Deol. The alleged incident has taken place at about 8 to 8.30 p.m. The C.D.R. report also shows the communication between the present applicant and the co-accused in between 8.30 to 8.40 p.m. As far as the part of the criminal conspiracy is concerned, no direct evidence would be available as regards the conspiracy. But, there should be some evidence on record to show that the present applicant and other co-accused were in communication prior to the incident, and they entered into the conspiracy. The allegation of conspiracy between the present applicant and the co-accused is based on the CDR. Besides this CDR, the investigating officer has not collected the location details of the present applicant and other co-accused. Thus, considering the circumstances in totality, except for the CDR report, there is no other material to connect the present applicant with the alleged offence. Admittedly, the involvement of the present applicant does not revealed in the actual incident, and firing of the bullet and eliminating the deceased. Now, the investigation is already completed and charge-sheet is filed. Considering the nature of the evidence which is collected against the present applicant, further incarceration of the present applicant is

not required. There is no criminal antecedents against the present applicant. In view of the above facts, the applicant has made out the case for grant of bail. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] The applicant- **Dadaya @ Praful s/o Waman Kukde**, shall be released on bail, in connection with Crime No. 404/2023 registered with Police Station Rajura, Tah. Rajura, District Chandrapur for the offence punishable under Sections 302, 307, 120(B) read with Section 34 of the Indian Penal Code, 1860; Sections 3 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of village Rajura, District Chandrapur till culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses, who are acquainted with the facts of the present case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]