



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

CRIMINAL APPLICATION (BA) NO. 233 OF 2024

Saddamoddin Muniroddin Inamdar

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Old
City, Akola District Akola

WITH

CRIMINAL APPLICATION (BA) NO. 571 OF 2024

Mohd. Shafi Alias Pappu Rafique

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Old
City, Akola District Akola

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Counsel along with Mr. Mohan N. Agrawal, Counsel for
the applicant in both applications.

Ms. H. N. Prabhu, APP for non-applicant /State in both applications.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 01/10/2024

1. These applications are filed by the applicants Mohd. Shafi @ Pappu Rafique and Saddamoddin Muniroddin Inamdar who are arrested on 23.05.2023 and 06.06.2023 respectively in connection with Crime No.152/2023 registered with Police Station, Old City, Akola, District Akola for the offences punishable under Sections 143, 147, 148, 201 and 302 read with Section 149 of the Indian Penal Code.

2. The accusation against the present applicants is on the basis of the report lodged by Mohan Kisan Gandwale alleging that the deceased

has attended the work and not returned from the work and, therefore, his family members were searching him but they could not traced him, due to the violence in the city on the said night. On the next morning, it revealed that deceased was murdered, during the riot. Initially, the First Information Report came to be lodged against the unknown persons. During investigation, the names of the present applicants are revealed, on the basis of the statement of eye witnesses, the applicants were arrested. It revealed during the investigation that the Investigation Officer had received the secret information as well as the call location of the applicants from which the involvement of the present applicants revealed and they were arrested. From the present applicants the weapons like iron rod, knife, sticks and stones are recovered. On the basis of the same, the crime is registered against the present applicants.

3. Learned Counsel Mr. Sirpurkar for the applicants submitted that the applicant Shafi is arrested on 23.05.2023 whereas the statements of the eye witnesses are recorded on 25.05.2023. On the date of arrest, there was no clue with the Investigating Officer as to the involvement of the present applicants in the alleged offence. He submitted that without any material before the Investigating Officer, the applicant Shafi was arrested by the Investigating Officer. He submitted that even

if the allegations which are made by the eye witnesses are concerned, it is alleged that the present applicant has given a blow of stick on the head of the deceased. The deceased had sustained the injuries which are incised wounds. The incised wounds are not possible by the weapon like a stick. Thus, no injury is attributed to the present applicant Shafi for the death of the deceased. He submitted that as per the allegations, the co-accused who has given a blow by wooden rafter on the head of the deceased. So, the injuries which are mentioned in the postmortem report are not attributed to the present applicant Shafi. Now the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required. As to the other co-accused Saddamoddin is concerned, he stated that he was arrested on 06.06.2023. The witness alleged that he has assaulted the deceased by means of stone. He submitted that there is a general allegation against the applicant Saddamoddin that he and other co-accused assaulted the deceased by means of stone. Thus, considering the allegation against the present applicant Saddamoddin, no role is attributed to him and general statement is made against him. In view of that his application for grant of bail deserves to be allowed.

4. Learned APP strongly opposed the said application and submitted that during investigation

the Investigating Officer has received a secret information regarding the involvement of the present applicants in the alleged offence. He has also collected the CDR reports from which it reveals that the location of the present applicants was Santoshi Mata Mandir, Killa Square where the alleged spot of incident is situated. Thereafter during the investigation, the Investigating Officer has recorded the statements of the present applicants at their instance the weapon of the offence are seized. The statements of the eye witnesses are also there which shows the involvement of the present applicants in the alleged offence. Thus, considering the *prima facie* material which is collected during the investigation, the involvement of the present applicants revealed. Considering the nature of the offence which shows that the applicants along with the other co-accused formed the unlawful assembly and in furtherance of the common object of the said assembly, eliminated the deceased and thereby committed an offence. In view of that, the application deserves to be rejected. Learned APP also pointed out that the orders passed by this Court rejected the applications of the other co-accused.

5. After hearing the learned Counsel for the applicants and learned APP for the State, perused the investigation papers. There is no dispute as to the fact that the arrest of the applicant Shafi was on 23.05.2023. Whereas the statements of the eye

witnesses are recorded on 25.05.2023. As per the investigation papers, during the investigation, the Investigating Officer has received secret information regarding the involvement of the present applicants in the alleged offence and to substantiate the said contention, the learned APP relied upon the general diary entry which was taken on 23.05.2023 which shows that on the basis of the technical explanation, the involvement of the applicant Shafi @ Pappu was revealed in the said incident and therefore, he was arrested. The statements of the eye witnesses are recorded during the investigation on 25.05.2023. On perusal of the statements of the eye witnesses, it reveals that the role attributed to the present applicant Shafi has assaulted the deceased by means of stick by giving a blow of stick on his head. On perusal of the postmortem report, it reveals that the deceased has sustained the incised wounds which are three in numbers and one crush wound. Admittedly, the statements of the eye witnesses shows that the applicant Shafi was assaulted by means of stick and incised wounds are not possible by the weapon like a stick. As far as the injury which is in the nature of the abrasions and multiple abrasions are concerned, which are not on the head of the deceased. The co-accused Shakil is also assigned with the role that he has given a blow by the wooden rafter on the head of the deceased. Thus, even if the statements of the eye witnesses are considered, which are contrary to the medical evidence. As the statements

shows that one blow was given by the present applicant Shafi on the head of the deceased and due to which the deceased has sustained the injuries. But the injuries sustained by the deceased are in the nature of the incised wounds which are not possible by the weapon like stick.

6. As far as the another circumstance on which the prosecution relied upon is concerned i.e. the CDR report. That CDR reports are obtained by the Investigating Officer, subsequently during the investigation. During investigation, the forwarding letter to the Police superintendent, Akola shows that the information was called by the Investigating Officer by issuing a letter on 17.06.2023 i.e. also subsequent to the arrest of the present applicants. As far as the general diary entry is concerned which shows that on the basis of the technical support, the involvement of the present applicants revealed is not substantiated that what nature of the technical support was obtained by the Investigating Officer, on the basis of which, the involvement of the present applicants revealed to the Investigating Officer. The stick is recovered at the instance of the present applicant Shafi on the basis of which the memorandum statement during the investigation. As already observed that all injuries sustained by the deceased, on the forehead, mastoid region as well as on the occipital region are in the nature of incised wounds. As observed earlier that the incised

wounds are not possible by the stick which is a blunt weapon. Thus, the contention of the learned APP that the injury which is assigned and attributed to the present applicant Shafi that he has given a blow of stick on the head of the deceased is not substantiated by the medical evidence. There is no dispute as to the fact that the earlier two bail applications of the co-accused are rejected by this Court. But apparently, from the order passed by this Court and the Co-ordinate Bench, it shows that these aspects were not pointed out during the arguments and therefore, that was not considered.

7. As far as the another applicant Saddamoddin is concerned, it is alleged that he has assaulted the deceased by means of stone. The statements of the eye witnesses shows that Saddamoddin and other co-accused have assaulted the deceased by means of stone. Thus, the general allegation is made against the said Saddamoddin.

8. Considering the entire investigation papers which shows that on the date of the arrest of the applicant Shafi, there was no material before the Investigating Officer to show his involvement. Admittedly, Saddamoddin was arrested subsequently on 06.06.2023 on the basis of the statements of the eye witnesses where the eye witnesses have made the general statements. Considering the role attributed to the applicant Shafi on the basis of the eye witnesses that the present applicant Shafi has

given a blow of stick on the head of the deceased which is not substantiated by the postmortem report because all injuries are sustained are in the nature of the incised wounds which are not possible by the weapon like stick which is a blunt weapon. Thus, considering the inconsistencies appearing from the investigating papers and considering the fact that now the investigation is completed, charge-sheet is filed, further incarceration of the present applicants is not required. Admittedly, the nature of the offence which is grievous in nature is to be taken into consideration, but while considering these aspects, the role of the present applicants is also requires to be considered. Considering the inconsistency between the medical evidence and the statements of the eye witnesses which are recorded subsequent to the arrest of the accused. On the date of the arrest, there was no material before the Investigating Officer to show the involvement of the present applicants. Mere CDR reports, even if it is accepted that the said information was available with the Investigating Officer are not sufficient to show that as location of the applicants was shown near the spot of incident is sufficient to show their involvement in the alleged offence. In view of that both the applications deserve to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The applications are allowed.

(ii) The applicant **Saddamoddin Muniroddin Inamdar** in Criminal Application (BA) No.233/2024 and the applicant **Mohd. Shafi Alias Pappu Rafique** in Criminal Application (BA) No.571/2024 shall be released on bail in connection with Crime No.152/2023 registered with Police Station, Old City, Akola, District Akola for the offences punishable under Sections 143, 147, 148, 201 and 302 read with Section 149 of the Indian Penal Code, on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iii) The applicants shall not enter into the City Akola, except attending the Court proceedings, till the culmination of the trial.

(iv) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicants shall furnish their place of residence along with address proof where they intending to stay after they are released on bail, before the trial Court.

(vi) The applicants shall also furnish the cell phone number and their address along with the address proof, before the trial Court.

(vii) The trial Court shall not be influenced by the observations made by this Court which are only to the extent of deciding the bail applications.

(URMILA JOSHI-PHALKE, J.)