

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

CIVIL APPLICATION (BA) NO.237/2024

Sheikh Javed S/o Sheikh Munawar
Vs.

State of Maharashtra, through P.S.O. P.S. Old City Akola Tq. Dist. Akola

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

Court's or Judge's orders

Shri A.S. Londhe, Advocate for applicant
Shri N.B. Jawade, APP for State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/07/2024

The applicant came to be arrested on 12/06/2023 in connection with Crime No.152/2023 registered with Police Station, Old City, Akola, for the offences punishable under Sections 143, 147, 148, 149 and 302 of the Indian Penal Code.

2. The accusation against the present applicant 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, last night during the riot. Initially, First Information Report came to be lodged against the unknown persons. During investigation, the name of the present applicant and other co-accused revealed, on the basis of the statement of eye

witnesses, therefore, they are arrested. It revealed during the investigation that during riot, present applicant and the other co-accused were aheading themselves and they have assaulted the deceased by means of iron rod, knife and sticks and stones. On the basis of the same, the crime is registered against the present applicant.

3. Heard learned Counsel Shri Londhe, for the applicant. He placed on record the written notes of argument and submitted that the CCTV footage nowhere shows the presence of the present applicant and the spot of incident. The presence of the applicant is because the applicant resides near the Police Station, Old City, Akola. He is a labour and he is not at all involved in the said crime. The CCTV footage shows that there is no incriminating material against the present applicant and there are no specific allegations against him. Now investigation is already completed. Charge-sheet is already filed. Further incarceration of the applicant is not required.

4. Learned APP strongly opposed the said application and taken brief through the entire investigation papers and submitted that death of the deceased is caused due to the head injury. The specific role is attributed to the present applicant by the eye witnesses namely Ganesh Shriram Kadam and Amol Ajabrao Unhale. The statements of both these witnesses shows that the present applicant has given a blow of iron rod on the head of the deceased and

deceased died due to the said injury. Thus, he submitted that there is *prima facie* material against the present applicant. During investigation, iron rod is also seized at the instance of the present applicant. On the basis of his memorandum statement recorded under Section 27 of the Indian Evidence Act. Thus, considering the *prima facie* case against the present applicant and the nature of the evidence and the gravity of the offence, the application deserves to be rejected.

5. Heard learned Counsel for the applicant, learned APP for the State, perused the investigation report from which it reveals that during riot, the deceased was assaulted by the present applicant and the other co-accused. As far as the role of the present applicant is concerned, which is clear from the direct evidence of the statements of the eye witnesses namely Ganesh Shriram Kadam, Amol Ajabrao Unhale. Both have stated that during riot, present applicant has took out the iron rod and gave a blow of iron rod on the head of the deceased. The Postmortem report shows that the deceased has sustained several injuries on his person and death of the deceased is caused due to the head injury. Thus, there is a direct role attributed to the present applicant, which shows that due to blow given by the present applicant on the head of the deceased, the death of the deceased is caused. Thus, considering the *prima facie* case against the present applicant, gravity of the offence and the

circumstances under which the death of the deceased is caused, *prima facie* case is made out. In view of that application deserves to be rejected. Accordingly, I proceed to pass the following order.

ORDER

Application is rejected.

JUDGE

R.S. Sahare