



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

CRIMINAL APPLICATION (BA) NO.268 OF 2024

(Shamshad Khalifa s/o Sadiq Khalifa Vs. The State of Maharashtra thr. PSO PS
Pandharkawada, Dist. Yavatmal)

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

Court's or Judge's orders.

Mr. S. M. Lodha, Advocate for Applicant.
Mr. D. V. Chauhan, Public Prosecutor for Non-Applciant/State.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 18th APRIL, 2024.

Heard.

2. The applicant came to be arrested on 19.10.2023 in connection with Crime No.1155/2023 registered with Police Station Pandharkawada, District Yavatmal for the offence punishable under Sections 302 and 109 read with Section 34 of the Indian Penal Code.

3. The accusation against the present applicant on the basis of report lodged by brother of the deceased namely Ravindra Namdeo Madpache. On an allegation that on 18.10.2023 he has attended his work in the agricultural field of one Vimalabai Dudhbawane at about 04:30 p.m. when he was returning he seen his brother deceased Pravin Madpache lying on the road under the influence of liquor. He asked his brother to come home but his brother told him that he will follow him. At the relevant time one boy having

green shirt on his person was present there. Thereafter, after sometime again the informant was proceeding from the same road he seen the deceased lying in the pool of blood and sustained injuries on his person. On the basis of said report police have registered the crime against the present applicant and the other co-accused.

4. The learned counsel for the applicant submitted that the entire case is based on circumstantial evidence as far as present applicant is concerned only the circumstance of seizure of the blood stained cloths and extra judicial confession there is no other evidence to connect him with the alleged offence. He submitted that even accepting the case as it is there was no preparation to commit the offence. Whatever happened is in spur of anger and considering the same at the most the case falls under Section 304 Part-I or Part-II of the IPC for which the punishment upto 10 years is provided and submitted that in view of that, the applicant be released on bail.

5. The learned APP strongly opposed the said application on the ground that though the case is based on circumstantial evidence but the deceased was lastly found in the company of the present applicant. Thus, the evidence of the last seen is also substantiated by the other circumstances that blood stained cloths of the present applicant are seized at his instance. The present applicant has also made memorandum statement in presence of the

panchas and shown spot of incidence wherein also the blood stains are found. During investigation the Investigating Officer has recorded the relevant statements of the witnesses including Bhojana Ramalu Jakawar, Sudhir Sanjay Rasamwar and Datta Istari Kortalarwar etc. from which it reveals that prior to the informant seen the present applicant along with the deceased. There was a quarrel between them and due to the quarrel the deceased was eliminated by the present applicant. Thus, he submitted that considering the *prima facie* material against the present applicant and the gravity of the offence the application deserves to be rejected.

6. Having heard the learned counsel for the applicant and the learned APP for the State, perused the investigation papers from the recitals of the FIR it reveals that initially when deceased was lying on the road and seen by the informant he has not sustained any injury and the present applicant was seen along with him. During investigation it further reveals that subsequently deceased has sustained the injury when the applicant was in the company of the deceased. The blood stained clothes of the accused are also seized at his instance. The spot of incident is also shown by the present applicant by making a memorandum statement in presence of the *panchas*. At the spot of incidence also the blood stains are witnessed by the Investigating Agency. During investigation the Investigating Officer has recorded the relevant statement of the witnesses from which it

reveals that prior to the incidence there was a quarrel between the present applicant and the deceased. As far as the contention of the learned counsel for the applicant that there was no premeditation is concerned cannot be accepted at this stage as immediately after the quarrel the incident has not taken place but the incident has taken place after sometime at an isolated place. The extra judicial confession is also made by the present applicant which sufficiently shows the involvement of the present applicant. Admittedly the evidence as to the extra judicial confession is which type of evidence but when it is corroborated by the other circumstantial evidence that can be acted upon. Considering the *prima facie* material against the present applicant which shows the connection of the present applicant with the alleged offence and considering the gravity of the offence, the application for grant of bail deserves to be rejected. Accordingly, I proceed to pass the following order:

The application is rejected.

JUDGE