



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

CRIMINAL APPLICATION (BA) NO. 291 OF 2024

Sachin Laxman Misal V/s 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.M. Chandekar, counsel for the applicant.

Mr. D.V. Chauhan, Public Prosecutor with Mr. U.R. Phasate, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 03/05/2024.

1. The applicant came to be arrested on 30/10/2023, in connection with crime No. 382/2023 registered with Police Station Aheri, District Gadchiroli for the offence punishable under Section 302 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of report lodged by the brother of the deceased Roshan Fulchand Kannake alleging that the co-accused Varsha was having an illicit relationship with the deceased Rakash as well as with the present applicant. On 29/10/2023 at about 7.47 p.m. he was in the house, and it was informed to him by the family members that Rakash had not returned to home therefore, he made an inquiry but he could trace him. At the relevant time, he received a phone call of Golu Atram, who disclosed that a person having a similar personality was lying near the Green Land School therefore, he immediately rushed to the spot and saw that the dead body of his brother Rakesh was lying in the sewage line, deceased had sustained the

injury of his person. He immediately lodged the report against the unknown person. On the basis of the same, police have registered the crime. During the investigation, the investigating officer recorded the relevant statements of the witnesses. From which it revealed that on the day of the incident, the deceased had been to the house of co-accused and there was a quarrel between the co-accused and the present applicant, and the deceased was assaulted by co-accused Shalini alias Harsha Maske as well as the present applicant and death of the deceased is caused.

3. Learned counsel Mr. A.M. Chandekar for the applicant submitted that as far as the prosecution case, which is entirely relied upon the statement of the daughter of the co-accused Harsha, who has subsequently changed her version when her statement under Section 164 of the Cr.P.C was recorded. He further submitted that the entire case is rested on circumstantial evidence and the circumstance is that, one phone call received by the brother of the present applicant, wherein he stated that he had received a phone call of the deceased, who informed him that he is assaulted by the present applicant. He submitted that admittedly, the brother of the present applicant was not present in the town, and merely on the basis of the statement, the involvement of the present applicant is revealed. Besides these two statements, there is no other material to connect the present applicant with the alleged offence. The co-accused – Harsha is already released on bail. In view of that and on the ground of parity, the present applicant deserves to be released on bail.

4. Learned Public Prosecutor strongly opposed the said application on the ground that the earlier statement of the daughter of the co-accused sufficiently shows the involvement of the present applicant as well as the co-accused. The statement of the brother of the present applicant also shows that at the relevant time, the present applicant was alongwith deceased and thereafter found dead. Thus, sufficient material is on record to show that it is the applicant, who has committed the offence. Moreover, there is a motive for the present applicant to commit the said offence. The nature of the injuries sustained by the deceased and the circumstance under which the death of the deceased is caused, which shows the gravity of the offence. In view of that, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned Public Prosecutor for the State, perused the entire investigation papers. During the investigation, the investigating officer has recorded the relevant statements of the witnesses i.e. the daughter namely Nidhi who specifically stated that on the day of the incident, there was a quarrel between her mother, the present applicant, and the deceased. The present applicant and her mother have assaulted the deceased. Though her statement under Section 164 of the Cr.P.C., in which he retracted her contention but as far as the presence of the present applicant is concerned, she is consistent in her 164 statement. The another witness is the brother of the present applicant who has also stated that on the day of incident i.e. on 28/10/2023 at about 11.00 p.m, he

received the phone call of the deceased and disclosed that his brother i.e. present applicant and the co-accused Harsha quarrelling with him and assaulting him. At that time, he also communicated with the present applicant and asked the present applicant, why he is involved in such type of activities and thereafter, disconnected the phone call. Thus, both the statements sufficiently shows the presence of the present applicant alongwith deceased and thereafter deceased was found dead.

6. Thus, these circumstances are sufficiently shows the involvement of the present applicant and the *prima facie* case is made by the present applicant. Considering the gravity of the offence, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]