



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

CRIMINAL APPLICATION (BA) NO.286 OF 2024

Kamal Ashok Ukey

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Kalmana, Nagpur

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

Court's or Judge's orders

Mr. S. D. Chande, Advocate for applicant.

Mr. M. J. Khan, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 02/07/2024

1. The applicant came to be arrested on 05.06.2019 in connection with Crime No. 491/2019 registered with Kalamna Police Station, District Nagpur for the offences punishable under Sections 302, 307, 341, 323, 120-B, 143, 147, 148 read with Section 149 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. The earlier bail application of the present applicant bearing No.8/2021 is rejected by this Court observing the *prima facie* case against the present applicant. As the trial was not commenced and there is no substantial progress in the trial as well as general allegations are made against the present applicant, this application is filed for grant of bail.

3. The facts of the case shows that one transgender namely Pravin @ Chamcham was murdered on 04.06.2019 around 1.45 p.m. at the residence of the co-accused namely Uttam @ Baba, who is also a transgender. One of the eye witness namely Rashi Khobragade [transgender], witnessed the assault, who lodged the report and on the basis of a report, the first information report was registered. As per the allegation by the prosecution that a group of transgenders led by co-accused Uttam @ Baba was earning their livelihood by singing and dancing. The money collected used to be routinely deposited with the leader and then it was being distributed amongst the group members. On account of distribution of collected amount the deceased Pravin @ Chamcham raised some dispute which disliked by the group leader Uttam @ Baba.

4. In this background of the facts, it is alleged that co-accused Uttam @ Baba, and some others had assaulted the deceased by means of knife. Some of the accused dealt stick blows on the person of the deceased which resulted into death of Pravin @ Chamcham. The incident was a fall out of monetary dispute amongst the members of the group.

5. Learned Counsel for the applicant Mr. Chande submitted that earlier bail application of the present applicant is rejected on merit. Now, the applicant is behind bar since last five years and there

is no substantial progress in the trial. He further submitted that considering the long incarceration of the present applicant and his liberty is curtailed. In view of Article 21 of the Indian Constitution, the applicant be released on bail. He further submitted that it is pertinent to note that the general allegations are made against the present applicant and on merit also no *prima facie* case is made out against the present applicant and therefore, the application deserves to be allowed.

6. Per contra, learned APP strongly opposed the said application on the ground that earlier all the bail applications are rejected by this Court observing that there is a *prima facie* case against the present applicant. He submitted that considering the gravity of offence, the co-accused Uttam @ Baba has formed the unlawful assembly with the other co-accused and all the accused have assaulted the deceased by means of knife and stick, which resulted into the death of the deceased.

7. On perusal of the postmortem report, the injuries found on the person of the deceased shows the injuries are sustained by the deceased on the vital part of the body by the sharp weapon.

8. Heard learned Counsel for the applicant and learned APP for the State. I had also minutely perused the First Information Report, statement of

the witnesses and other relevant materials. The FIR is lodged immediately within six hours of the incident. In an initial statement, eye witness has stated that the co-accused Uttam @ Baba, Kiran Gawali and the present applicant and one Sheikh Nisar and two unknown persons assaulted the deceased by means of knife. She further explained that deceased was assaulted by means of knife i.e. the present applicant which is also known as by name Chattu. The statement of the informant further shows that the co-accused Kiran Gawali and two unknown applicants assaulted by means of stick.

9. *Prima facie* the reading of the statement and the relevant portion of the statement shows that the allegation of the inflicting knife blows are against the present applicant and one group leader Uttam @ Baba. The subsequent statement recorded under Section 164 of the Code of Criminal Procedure was also perused. In the said 164 statement, though the informant has stated some portion differently, but in the later statement also she has confirmed the role of the present applicant which shows that the deceased was assaulted by means of knife by the present applicant. Thus, *prima facie* case is made out against the present applicant.

10. As far as the involvement of one of the co-accused Nisar is concerned, who is released on bail, but role attributed to the co-accused Nisar is

completely different therefore, the ground of parity is not available to the present applicant, the same is also observed by this Court in Criminal Application No.8/2021 which was decided on 15.06.2021.

11. Learned Counsel for the applicant placed reliance on the two orders passed at Principal Seat in **Criminal Bail Application No.2244/2023 Jahid Alias Javed Liyakat Ansari Vs. The State of Maharashtra decided on 18.12.2023** and **Bail Application No.2145/2023 Shishirkumar @ Gopalchandra Padhy Vs. State of Maharashtra decided on 12.09.2023**. I have perused the facts of the case. The facts of the case shows that on earlier occasion, the Court has shown the disinclination to entertain the application. On perusal of the material contained in the charge-sheet, liberty was granted to the applicant to approach this Court once again, if the trial does not commence within a period of one year. As the trial was not commenced within a period of one year and therefore, considering the speedy trial is the right of the accused, the accused therein was released on bail. Similar is the situation in the case of **Shishirkumar @ Gopalchandra Padhy** (supra), wherein also it is observed that though liberty was granted, the trial was not commenced and therefore, the application for bail of the applicant was considered.

12. As far as the present applicant is concerned, earlier bail applications are rejected and no such liberty was granted to the present applicant. Admittedly, the right of the accused is of a speedy trial.

13. The Sessions Court has to take necessary steps to secure the presence of the accused before the Court by directing the concerned Authority to produce the purpose of trial. It is the duty of the prosecution also to secure the presence of the witnesses. It is well settled that merely because delay in holding the trial is not sufficient to grant bail. The factors like severity of the offence is to be taken into consideration while considering the bail application of the accused. In the present case, the present applicant and other co-accused have formed unlawful assembly and in furtherance of the common object, the deceased was assaulted mercilessly and caused his death. As far as the commencement of the trial is concerned, which can be taken care of by directing the trial Court to expedite the trial.

14. In view of that, I proceed to pass following order:

ORDER

(i) The application is rejected.

(ii) The learned trial Court shall expedite the trial and make an every endeavour to dispose of the trial within nine

months. If the trial is not concluded within nine months, the applicant is at liberty to approach this Court for grant of bail.

15. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)