



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

CRIMINAL APPLICATION (BA) NO. 364 OF 2024

Prajwal s/o Naresh More

Vs.

State of Maharashtra, Through Police Station Officer, Bela,
District Nagpur

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

Court's or Judge's orders

Mr. Nihalsingh Rathod, Advocate h/f Mr. S. N. Nandeshwar Advocate for
applicant.

Mr. A. B. Badar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 07/05/2024

1. The applicant came to be arrested on 28/07/2023 in connection with Crime No. 250/2023, registered with Police Station Bela, District Nagpur under Sections 302 and 326 R/w 34 of the Indian Penal Code.

2. The accusations against the present applicant is on the basis of the report lodged by one Rohit Randhir Shambharkar, who is the nephew of the deceased. As per the allegations, on 28/07/2023 at about 10:00 a.m., when deceased was proceeding towards the village, the present applicant and other two accused were standing on the cement road, at the relevant time, present applicant Prajwal More asked the deceased why he is defaming them by saying that there is an illicit relations between his

wife and them. On that count, there was a scuffle between them and the present applicant and co-accused assaulted his uncle by means of wooden log, due to which, the deceased sustained grievous injuries and subsequently succumbed to death. On the basis of the said report, police have registered the crime against the present applicant.

3. The learned counsel for the applicant pointed out from the statement of the informant and other witnesses that the deceased was addicted to liquor, he was suspecting character of his wife and seducing the present applicant namely Prajwal More by saying that his mother eloped with one Naresh. The learned counsel further pointed out from the statement of the wife of the deceased and brother of the deceased that the deceased was in habit of picking up quarrel with the villagers and was also ill-treating his wife by suspecting her character. The statement of Police Patil-Pandurang Nakade also shows that he received the phone call of present applicant, who disclosed that the deceased had picked up quarrel with them and he should come immediately, but before he reached there, the deceased had the sustained injury and was lying on the spot. He submitted that considering the circumstances under which the alleged incident had taken place from which, it reveals that the case covered under explanation 1 and explanation 4 i.e. when the culpable homicide is not murder. He also

pointed out from the post-mortem report that at the relevant time, the deceased was under the influence of liquor. On the basis of the submissions, he submitted that considering the circumstances under which the alleged incident has taken place and there was no intention or motive to commit murder of the deceased revealed, but whatever happened is sudden quarrel and due to provocation at the hands of the deceased. He submitted that there was no preparation at the instance of the present applicant or the co-accused. The other co-accused Anand Patil is already released on bail, in view of that, the present applicant be released on bail.

4. The learned APP for the State strongly opposed the said application on the ground that considering the injury sustained by the deceased, which are 14 in numbers shows that the deceased was assaulted by the present applicant and other co-accused with an intention to commit his murder. The injuries sustained by the deceased are on the vital parts of the body. The statement of the informant, who was also the eye witness of the said incident sufficiently shows that the quarrel was initiated by the present applicant Prajwal More and, therefore, the defence of sudden fight and sudden quarrel and giving provocation is not available to the present applicant, in view of that, the application deserves to be rejected. He further submitted that considering the gravity of the offence for which

punishment of life imprisonment is provided, moreover, all the witnesses are from the same village and if the applicant is released on bail, he would tamper the prosecution evidence and, prays for rejection of the application.

5. Having heard the learned counsel for the applicant and learned APP for the State. Perused the investigation papers. From the recitals of the First Information Report, it reveals that when the deceased was proceeding towards the village at that time, there was hot exchange of words between the present applicant Prajwal More and deceased on the count that why the deceased is defaming them by saying that they are having illicit relations with his wife. The said contention is also substantiated by the statement of the wife, who in her statement stated that the deceased used to suspect her character by saying that she is having illicit relations with the present applicant and co-accused Anand Patil. The statement of the informant as well as the brother of the deceased also substantiated the fact that the deceased used to suspect the character of the wife and on the earlier date, he has assaulted his wife and, therefore, she approached to Police Patil. The statement of Police Patil, namely Pandurang Nanaji Nakade also shows that he received the phone call of the present applicant who disclosed that the deceased has initiated the quarrel with them and, therefore, he should come there.

6. The fact regarding suspicion by the deceased on his wife is also substantiated by Police Patil, who stated that on the earlier date wife of the deceased approached to him and disclosed that the deceased is suspecting her character saying that she is having illicit relations with the present applicant and other co-accused. From the recitals of the FIR, it nowhere shows that the present applicant and co-accused have prepared and by holding any weapon in their hands they were standing. It shows that they were standing on the spot and statement of the informant further states that at the relevant time there was a hot exchange of words between them. This is sufficiently shows that as the deceased was suspecting the character of his wife by saying that she is having illicit relations with the present applicant and other co-accused. Moreover there was hot exchange of words as the deceased was seducing the present applicant by saying that his mother eloped with somebody. Which resulted into the quarrel between them. It is also apparent from the investigation papers that the deceased provoked the present applicant by alleging he has illicit relations with his wife as well as his mother eloped with somebody and, therefore, the alleged incident had taken place. The statement of Police Patil is also substantiated by CDR report, which shows that Police Patil had received a phone call on his mobile at about 10:50 a.m.

7. Considering the circumstances under which the alleged incident had taken place which sufficiently shows that there was a provocation and due to provocation also there was a hot exchange of words between them initially and during that scuffle the present applicant and other co-accused have picked up the stick which was lying there and gave blow by the said stick. Thus, considering the circumstances under which the alleged incident has taken place and provocation at the instance of the deceased and in the said incident death of the deceased is caused. Now, the investigation is completed, charge-sheet is filed. Considering that there are no criminal antecedents, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I pass the following order :

ORDER

(i) Application is allowed.

(ii) The applicant **Prajwal s/o Naresh More** shall be released on bail in connection with Crime No.250/2023 registered with Police Station Bela, District Nagpur on executing PR bond in the sum of Rs.30,000/- and surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a month on Sunday between 10:00 a.m. to 1:00 p.m. on first of every month and the Investigating Officer shall record his presence.

(iv) The applicant shall not enter into village Chikhlapar, Tah. Bhiwapur, District Nagpur, till culmination of the trial.

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

8. The learned trial Court shall not be influenced by the observations made by this Court which are only for the purpose of bail.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)