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44.ba.406.2024

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

CRIMINAL APPLICATION (BA) NO.406 OF 2024

Sheikh Babbu Sheikh Rehman

Vs.

State of Maharashtra, Through Police Station, Hudkeshwar, Nagpur

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

Court's or Judge's orders

Mr. R. H. Rawlani, Advocate for applicant.
Ms. Soniya Thakur, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/07/2024

1. The applicant came to be arrested on 08.10.2023 in connection with Crime No.808/2023 registered with Police Station, Hudkeshwar, Nagpur for the offence punishable under Sections 302, 109 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the wife of the deceased Mehga Mahendra Kohale on an allegation that on 08.10.2023 her husband was not at house and she received a phone call of friend of her husband Anil Nakade who disclosed to her that there was a quarrel between the co-accused Ashik Sheikh and the deceased on account of money transaction and the co-accused Ashik Sheikh gave a blow by knife on the person of her husband and her husband was admitted in the hospital. She immediately rushed to the hospital, however, her husband was declared dead. On the

basis of the said report, police have registered the crime against the Ashik Babbu Sheikh.

3. During the investigation, the statements of three witnesses are recorded, from which the role of the present applicant was revealed as he has instigated the co-accused to give a blow on the person of the deceased and therefore, the co-accused has given a repeated blow on the person of the deceased. On the basis of said, the present applicant was arraigned as an accused.

4. Learned Counsel for the applicant submitted that as far as the role of the present is concerned, which is not narrated in the FIR. Admittedly, the informant has received the information from said Anil Nakade. As the said Anil Nakade has not informed regarding the involvement of the present applicant. She has not named the present applicant in the FIR. He submitted that the applicant is arraigned as an accused merely because he is the father of the co-accused. Now, the investigation is already completed, charge-sheet is filed, further custodial interrogation of the present applicant is not required, in view of that, he be released on bail.

5. Learned APP strongly opposed the said application on the ground that there are three eye witnesses who stating regarding the role of the

present applicant that present applicant has instigated the co-accused and thereafter, the co-accused has given repeated blow on the person of the deceased. The deceased has sustained as many as 20 injuries on the person of the deceased. Thus, no remorse was shown by the co-accused while assaulting the deceased and the present applicant is the person who instigated the co-accused, who assaults the deceased. Thus, *prima facie* case is made out against the present applicant, in view of that, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the entire investigation papers from which it reveals that initially, the applicant was not named in the FIR. During the investigation, on the next day, statements of the eye witnesses are recorded from which it reveals that the present applicant has instigated the co-accused to give a blow on the person of the deceased. On perusal of the said statements, it reveals that before arrival of the present applicant the quarrel was started between the co-accused and the deceased and the co-accused has already given a blow on the chest of the deceased and thereafter, there alleged to be an instigation by the present applicant.

7. From the statements of other two witnesses it reveals that as far as the instigation is

concerned, there are no consistent statement in what manner the applicant has instigated the co-accused. Even considering that allegation as it is, only role attributed to the present applicant as to the instigation. Admittedly, the applicant has not handed over any weapon to the co-accused but the co-accused himself has brought the said weapon. Thus, considering now the investigation is already completed, charge-sheet is filed and further incarceration of the present applicant is not required, considering the role attributed to him. In view of that, application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Sheikh Babbu Sheikh Rehman** shall be released on bail in connection with Crime No.808/2023 registered with Police Station, Hudkeshwar, Nagpur for the offence punishable under Sections 302, 109 read with Section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend Hudkeshwar Police Station, Nagpur once in a month on 1st of every month, till the culmination of the trial.
- (iv) The applicant shall not leave the jurisdiction of Nagpur District without prior permission the Court.

(v) The applicant shall not enter into the vicinity of Shrisai Nagar, Bahadura Fata in front of Pendharkar College, Umred Road Sakkardara, till the culmination of the trial.

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

(vii) The contravention of any of the conditions imposed would lead to the cancellation of the bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)