



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

CRIMINAL APPLICATION (BA) NO.409 OF 2024

Milind Bhimrao Uparwat

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Patur,
District Akola

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

Court's or Judge's orders

Mr. Jagvijay Singh Babusingh Gandhi, Advocate for applicant.

Ms. H. N. Prabhu, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 27/06/2024

1. The applicant is came to be arrest on 16.12.2023 in connection with Crime No.558/2023 which was initially registered under Sections 323, 326, 504 read with Section 34 of the Indian Penal Code and subsequently converted into 302 of the Indian Penal Code.

2. As per the accusation, there was a previous enmity between the family members of the present applicant and the informant, as the granddaughter of the informant was kidnapped by the son of the cousin brother and since then there was a dispute between them. On 16.12.2023, the quarrel was started on the above said count and it is alleged that in that scuffle present applicant and one Pravin has hold the deceased from the backside and the co-accused Prameshwar given blow of iron pipe

on his head, due to which, the deceased has sustained the grievous injury, he immediately shifted to the hospital, but while taking treatment, he succumbed to the death.

3. Learned Counsel for the applicant submitted that as far as the presence of the present applicant is concerned, which is doubtful, as co-accused has lodged report against the eye witnesses and the informant, wherein the presence of the present applicant is not mentioned. He also invited my attention towards the medical examination carried out after the arrest of the present applicant, which shows that no injuries are found on the person of the present applicant. He submitted that as far as the role of the present applicant is concerned, which is only to the extent of holding the deceased from the backside. The intention or knowledge cannot be attributed to the present applicant, as there is nothing on record to show that present applicant was knowing that other co-accused were assaulted the deceased by means of iron pipe on his head. He submitted that now the investigation is completed, charge-sheet is filed, further incarceration of the present applicant is not required, in view of that, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that, in furtherance of their common intention, the deceased was assaulted and

eliminated. The deceased has sustained the head injury and death of the deceased is also due to the head injury. Considering the *prima facie* case made out against the present applicant, the application deserves to be rejected.

5. Perused the recitals of the FIR as well as various statements including the statement of the eye witnesses. The consistent statements of the eye witnesses and the informant show that it was the present applicant who hold the deceased from the back side and thereafter, co-accused has given a blow on his head. Two injuries are sustained by the deceased, as per the postmortem report on his head and which resulted into his death. As far as the role of the present applicant is concerned, his presence appears to be doubtful as no injuries are found though he was involved in this scuffle. Moreover, the role attributed to the present applicant is only to the extent of holding the deceased and assaulting him by fist and kick blows. Now, the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.

(ii) The applicant **Milind Bhimrao Uparwat** shall be released on bail, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.558/2023 registered with Police Station, Patur, District Akola for the offence punishable under Sections 302, 326, 323, 504 read with Section 34 of the Indian Penal Code.

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

(iv) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)