



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

CRIMINAL APPLICATION (BA) NO.431 OF 2024

Roshan s/o Sunil Shende

Vs.

State of Maharashtra, Through Police Inspector, Police Station, Sewagram,
District Wardha and another

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

Court's or Judge's orders

Mr. S. W. Sambre, Advocate for the applicant.

Mr. N. B. Jawade, APP for respondent No.1/State.

Ms. S. K. Phaltankar, appointed Advocate for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 23/07/2024

1. The applicant came to be arrested in connection with Crime No.386/2022 registered with Police Station, Sewagram, District Wardha for the offences punishable under Sections 302 and 449 read with Section 34 of the Indian Penal Code and under Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. The crime is registered on the basis of the report lodged by Siddharth Damduji Thul on an allegation that the deceased was his brother and the mother of the present applicant was working at the house of the deceased which was disliked by the co-accused Ajay Shende. The co-accused Ajay Shende is also working with the deceased. It is alleged that on 06.07.2022 he received the

information from the Police Patil that some unknown person had assaulted his brother and he succumbed to the death. After receipt of the said information, he immediately went to the spot of the incident and saw that his brother has sustained head injury and one liquor bottle and the wooden log were lying there. On the basis of the said report, police have registered the crime against the unknown person.

3. During the investigation, it revealed that the co-accused Ajay Shende has disliked his mother working with the deceased and doing work as a maidservant. It was suspected that the mother was having illicit relations with the deceased, on that count, the quarrel was took place between them. On the earlier day of the incident also and there was a quarrel between them and regarding the same, Ajay Shende has lodged a report as well as the deceased has also the report. It revealed during the investigation that the present applicant was seen at the spot of incident by the witnesses. On the basis of which, the applicant was arrested.

4. Learned Counsel Mr. Sambre for the applicant submitted that as far as the statement of one of the eyewitness namely Pranit @ Sonu Vinod Mokhale is concerned which is recorded on 05.12.2022 whereas the incident occurred on 06.07.2022, thus after the delay of more than five months, his statement was recorded. He submitted

that the other statements are concerned, which only referring the co-accused Ajay Shende and accused No.3 Gaurav Kapate. There is no reference regarding the present applicant and also none has seen the present applicant and other co-accused together. Merely because, he is the brother of the co-accused, he is implicated in the alleged offence. Now, the investigation is already completed, charge-sheet is filed, further incarceration of the present applicant is not required.

5. Learned APP for the State and learned appointed Counsel for the respondent No.2 strongly opposed the said application on the ground that there is a *prima facie* material as the statement of one of the labour namely Rajdip Vasantrao Nagrale shows that in the night of the incident, he had seen the present applicant and other co-accused coming out from the gate of the deceased as one of the co-accused was serving with the deceased therefore, he has not raised any suspicion against them. The statements of the other witnesses show the enmity between the co-accused Ajay Shende and the deceased. The statement of Ashish @ Bunt Sudhakar Gosavi also discloses that on 06.07.2022 at about 10.00 a.m. he met Ajay Shende and disclosed that he has lodged report against the Arunkumar Thul i.e. the deceased. On the same night at about 7.00 p.m. Chhakula Mokhale and his brother Sonu were at the house of the deceased. It further reveals from

the said statements that at the relevant time, he has seen co-accused Ajay Shende and accused No.3 Gaurav Kapate come on the two-wheeler and they slipped in front of them, though they went to assist them but they ran away from the spot. Thereafter, said Sonu Mokhale came in a scared condition approached him and disclosed that present applicant, his brother Ajay Shende and their friend Gaurav came at the house of the deceased and assaulted him. Thus, on the basis of the said statement, the involvement of the present applicant revealed. Thus, there is a *prima facie* case and therefore, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the presence of the applicant was seen on the intervening night at the house of the deceased, as well as the statement of Ashish @ Bunty to whom the other eyewitnesses have disclosed the incident and his statement was recorded in earlier point of time. Thus, at this stage, *prima facie* case is made out against the present applicant. The offence is of a serious nature, considering the gravity of the offence and the role attributed to the present applicant, the application deserves to be rejected. Accordingly, the application is rejected.

7. The applicant is arrested on 11.07.2022. The learned trial Court shall expedite the trial considering the applicant is behind bars since last two years.

8. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)