



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

CRIMINAL APPLICATION (BA) NO. 400 OF 2024

Abhijit Sunil Wankhade V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.V. Sirpurkar, counsel for the applicant.

Mrs. Swati Kolhe, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/05/2024.

1. The applicant came to be arrested on 11/08/2023, in connection with Crime No. 291/2023 registered with Police Station Old City, District Akola for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860.

2. The accusation against the present applicant is on the basis of report lodged by Shaikh Imran @ Sonu Shaikh Hussain, who has alleged that Shaikh Imran @ Sonu Shaikh Hussain is the younger brother of the deceased namely Shaikh Farooque @ Sharukh Shaikh Hussain. The co-accused Atul @ Jakki Shrikrushna Ahir was suspecting that said deceased has given some information to the police and therefore, police have conducted a raid, and crime is registered against him. By taking the said motive, he has threatened the deceased on several occasions. It is alleged that on 10/08/2023 when the informant was at the house, one Vishal Rajpal came to the house to take the deceased alongwith him, and accordingly

they left the house. At about 3.30 p.m., a friend of Sharukh namely Rahul Shinde came at home and disclosed Sharukh met him at Washim Bypass and asked him to come along with him. Immediately they rushed towards New Hingna. It was informed to him that when the deceased was proceeding on the motorcycle, at that time, co-accused Atul @ Jakki Shrikrushna Ahir and Abhijit Wankhede chased him on his motorcycle. On the way, the motorcycle of the deceased was slipped and they fell down. At that time, co-accused Atul @ Jakki Shrikrushna Ahir and the present applicant assaulted them by fist and kick blows, and the deceased ran to save himself. At that time, co-accused Atul @ Jakki Shrikrushna Ahir has thrown the stone on his head, due to which, he sustained injury and died on the spot. On the basis of the said report, police have registered the crime against the present applicant and other co-accused.

3. Learned counsel Mr. S.V.Sirpurkar for the applicant submitted as far as the present applicant is concerned, the only allegation against him is that, he assaulted the deceased by fist and kick blows. There was no previous enmity between the present applicant and the deceased. It was between the co-accused and the deceased. He invited my attention towards the statement of an eyewitness - Rahul Vishwambhar Shinde who also narrated that the present applicant has assaulted the deceased by fist and kick blows. As far as the cause of death is concerned, it is due to head injury, said head injury is attributed to the co-accused.

4. He further invited my attention towards the Section 164 Cr.P.C. statement of Rahul Vishwambhar Shinde. In Section 164 Cr.P.C. statement, he has not even alleged that the present applicant has assaulted the deceased by fist and kick blows. He submitted that considering the role attributed to the present applicant, now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required and he be released on bail.

5. Learned APP strongly opposed the said application on the ground that, considering the statement of the eye-witness and considering the fact that, in furtherance of common intention, the death of the deceased is caused. Therefore, the criminal application deserves to be rejected.

6. She further invited my attention towards the statement of the eyewitness, and stated that there is specific allegation against the present applicant that the present applicant has chased the deceased and thereafter, assaulted him by fist and kick blows. Thus, considering the role attributed to the present applicant, the bail application deserves to be rejected.

7. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. From recitals of the FIR, it reveals that co-accused Atul @ Jakki Shrikrushna Ahir was having grudge against the deceased, as he was suspecting that deceased has informed the police, and therefore, the crime is registered against him. He further suspected that the above said raid took place based

on the information passed by the deceased. This lead to the enmity took place between the co-accused and the deceased. As far as the present applicant is concerned, the recitals of the FIR, nowhere shows that there was either any enmity or any scuffled between the present applicant and the deceased. The only one eyewitness – Rahul Vishwambhar Shinde, whose statement is recorded by the investigating officer who attributed the role to the present applicant that, the present applicant has assaulted the deceased by fist and kick blows. The Post Mortem Report shows that 6 to 9 injuries which are in nature of abrasions, and one head injury. The head injury is attributed to the co-accused, death of the deceased is also due to head injury. Considering the role attributed to the present applicant which is to the extent of assault by fist and kick blows. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. There are no criminal antecedents against the present applicant. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) The criminal application is **allowed**.
- b) The applicant -Abhijit Sunil Wankhade, shall be released on bail, in connection with Crime No. 291/2023 registered with Police Station Old City, District Akola for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, on executing P.R. bond in the

sum of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the jurisdiction of Old City Akola Police Station till culmination of the trial.
- d) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
- e) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]