



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

CRIMINAL APPLICATION (BA) NO.390 OF 2023

Santosh S/o Shriram Gaikwad

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station, Bibi,
District, Buldana

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

Court's or Judge's orders

Mr. Bhushan Dafle, Advocate for applicant.

Mr. A. G. Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/01/2024

1. Applicant came to be arrested on 03.10.2022 as crime is registered against him vide Crime No.148/2022 registered with Police Station, Bibi, District Buldana for the offences punishable under Sections 302, 323, 324, 307, 504 and 506 read with Section 34 of the Indian Penal Code.

2. As per the accusation made against the applicant is that on 02.10.2022 when informant had been to his agricultural field, at that time she received a message that her father-in-law was assaulted by the present applicant and other co-accused and also abused and sustained grievous injuries, therefore, immediately he was taken to the hospital, but succumbed to the death on 05.10.2022. On the basis of the said report, police have registered the crime.

3. Learned Counsel for the applicant Mr. Dafle submitted that the applicant is implicated maliciously and falsely in the alleged offence due to the previous dispute. In fact, he was not involved in the said crime alternatively, he submitted that even for the sake of allegations are taken as it is, it was a sudden fight and sudden quarrel and the case of the applicant covers under the exception. There was no instantaneous death of the deceased. He died after two days of the incident. Now, investigation is completed and charge-sheet is filed and further incarceration of the present applicant is not required.

4. Said application is strongly opposed by the State on the ground that the old man of 75 years was assaulted by the present applicant and another co-accused, the incident was witnessed by two eye witnesses. The *prima facie* case is made out against the present applicant. Considering the nature of allegation, the offence is of serious nature, if applicant is released on bail, he will tamper with the prosecution evidence. In view of that, application deserves to be rejected.

5. Having heard learned Counsel for the applicant and learned APP for the State and perused the recitals of the FIR. From the recitals of the FIR it reveals that, there was a previous dispute between the family members of the deceased and the present applicant. It appears that there was a common well in the agricultural land and the agricultural land of the deceased and the

present applicant was adjacent to each other. Previous dispute arose on account of the said common well and common connection from the said well. On 02.10.2022 the deceased, who was 75 years old was assaulted by the present applicant and other co-accused by means of stick and fist and kick blows. He sustained the grievous injuries and succumbed to the death after two days. The alleged incident is witnessed by the two eye witnesses namely Manik Raibhan Khandare and Prakash Bhimrao Aade whose statements are recorded by the Investigating Officer. The postmortem report shows nine injuries on the person of the deceased. The cause of the death of the deceased is head injury with blunt trauma to chest. Thus, the death of the deceased is caused due to the assault on his person by the present applicant. Considering the *prima facie* case made out against the present applicant and the nature of the offence which shows that the old man was assaulted by the present applicant mercilessly and caused his death. The application deserves to be rejected. Accordingly, I proceed to pass following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)