



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

CRIMINAL APPLICATION (BA) NO.449 OF 2023

Ghanshyam @ Bitwa Ishwarlal Dithor
Vs.

The State of Maharashtra, Through Police Station Officer, Chandur Bazar,
District Amravati

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

Court's or Judge's orders

Mr. U. P. Dable, Advocate for applicant.
Mr. Nitin Autkar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/03/2024

1. The applicant came to be arrested on 18.01.2022 in connection with Crime No.45/2022 registered with Police Station, Chandur Bazar, District Amravati for the offences punishable under Sections 302, 307, 504, 506, 147, 148 read with Section 149 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Mohammad Shahajad Abdul Rauf alleging that on 17.01.2022 initially informant along with other friends had been to Nayan Bar for consumption of liquor, wherein they got into some verbal altercations and thereafter, they left the said place and went to another bar namely, Sachin Bar. At Sachin Bar, the present applicant was present. It is alleged that the quarrel started between them at the initiation of the

present applicant, on that the scuffle took place between and the present applicant assaulted the deceased by means of knife. Due to the blow of knife, the deceased sustained the grievous injuries on his person and succumbed to the death. It is further alleged that in the said incident informant has also sustained the injuries. On the basis of said report, police have registered the crime against the present applicant and other co-accused.

3. Learned Counsel Mr. Dable for the applicant submitted that the other co-accused are already released on bail. There are inconsistent statements of informant Mohammad Shahajad Abdul Rauf. Now, the investigation is completed and charge-sheet is filed. He invited my attention towards two statements of said Mohammad Shahajad Abdul Rauf and pointed out that he has modified his version in a subsequent statement. He submitted that the quarrel was started at the instance of the deceased. Now, the investigation is already completed and 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 application on the ground that the statements of the eye witnesses supported by the circumstantial evidence that the weapon seized at the instance of the present applicant as well as one blood stained

handkerchief was also seized. The deceased has sustained stab injury on the left side lower abdomen which proves to be fatal and deceased died due to said injury. Considering the gravity of the offence, the application deserves to be rejected.

5. Learned Counsel for the applicant placed reliance on **Guljar Hussain Vs. State of U.P.** reported in **1993 Supp (1) SCC 554** and submitted that at the most the case of the applicant falls under Section 304 Part – I of the Indian Penal Code, as there was no intention to commit the murder of the deceased or to eliminate him. In view of that, he prays for releasing the applicant on bail.

6. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. From the recitals of the FIR, it reveals that when the informant along with his friends and deceased had been to Sachin Bar, at that time, the present applicant was also present there and started abusing them and therefore, the scuffle took place between them. The recitals of the FIR further show that initially, the present applicant has took out the knife and gave a blow of that knife on the thigh of the informant and when the co-accused Karan attempted to restrain him, at that time he has given a blow of said knife on the abdomen portion of the deceased and immediately deceased fallen on the ground and subsequently succumbed to the death.

7. During the investigation, the memorandum statement of the present applicant was recorded and at his instance one white colour handkerchief and one knife of 36.2 cm. were recovered having blood stains on them. During investigation, the Investigating Officer has also recorded the relevant statements of the witnesses from which it reveals that the initiation of the quarrel was at the instance of the present applicant. The present applicant has not only given a single blow to the deceased, but he has also caused the injuries to the informant as well as the other co-accused Karan. The informant has also sustained the grievous injury in the said incident. As far as the contention of the learned Counsel for the applicant regarding intention is concerned, admittedly intention is to be gathered from the circumstances. It is always said that intention is the inner compartment of mind of the said person and therefore, no direct evidence would be available for gathering the intention and therefore, the intention is to be gathered from the surrounding circumstance. The applicant who was carrying the knife along with him when he was present at the spot of the incident itself sufficient to show his intention. The applicant has given a blow of knife with a force and there is instantaneous death of the deceased. Mere sustaining a single injury is not sufficient to attract Section 304 of the Indian Penal Code. Even if, it is considered that there was no intention to eliminate the deceased but the circumstances under which the alleged incident has

taken place is to be taken into consideration. It was the present applicant, who has initiated the said quarrel, as he has started abusing the informant and the deceased and therefore, it was attempted to restraint the present applicant from abusing, at that time present applicant took out the knife and gave a forceful blow on the vital part of the deceased and deceased succumbed to the death.

8. Considering the gravity of the offence for which the punishment of life imprisonment is provided. There is a direct evidence against the present applicant in the nature of the statement of the eye witnesses. It is not a case in which discretion can be used in favour of the present applicant. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)