



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

CRIMINAL APPLICATION (BA) NO. 477 OF 2024

Sunil s/o Dhaniram Bhongade

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Gondia (Gramin), District Gondia

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

Court's or Judge's orders

Mr. A. A. Naik, Advocate along with Mr. V. R. Borkar, Advocate for
applicant.

Mr. C. A. Lokhande, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/07/2024

1. The applicant came to be arrested on 07.12.2023 in connection with Crime No.520/2023 initially registered under Sections 279, 304-A of the Indian Penal Code and 134A of the Maharashtra Motor Vehicles Act and subsequently under Section 302 of the Indian Penal Code.

2. Heard learned Counsel Mr. A. A. Naik for the applicant. He submitted that initially the crime was registered against the unknown persons alleging that some unknown vehicle had dashed the motorcycle of the deceased, in which he has sustained the grievous head injury and succumbed to the death. On the basis of the said report, the police have registered the crime against the unknown person. During the investigation, it revealed to the

investigating agency that the present applicant and one another co-accused had assaulted the deceased due to their enmity from the last 30 years and eliminated the deceased. He submitted that to substantiate the said contention, the prosecution placed reliance on CCTV footage, but the CCTV footage nowhere shows that some persons have assaulted the deceased at the place of the occurrence.

3. He further submitted that the communication on which the prosecution placed reliance by the Local Crime Branch to the Police Inspector, Police Station, Gondia is only on the basis of the statement of the present applicant on the information given by him during the interrogation. The said statement itself is not admissible in the evidence as the statement is before the police. He submitted that thus, besides the CCTV footage which is alleged to be an evidence against the present applicant, there is no material to connect the present applicant with the alleged offence. He further submitted that the recovery of the incriminating weapon is also from the open place accessible to all therefore, this part of the evidence is also not sufficient to connect the present applicant with the alleged offence. Moreover, no blood stains are found on the said incriminating weapon. Now, the investigation is already completed, charge-sheet is filed, further custodial interrogation 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 the location of the present applicant is located near the spot of the incident and the incriminating weapon was also recovered at the instance of the present applicant. There was previous enmity between them which is sufficient for having the motive to eliminate the deceased. Thus, there is a *prima facie* material against the present applicant in the alleged offence, in view of that, the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. Admittedly, the crime was registered against the unknown person initially i.e. under Section 279, 304-A of the Indian Penal Code. The recitals of the initial report show that the deceased was accompanied by his daughter Prachi Moreshwar Khobragade who informed the informant that her father met with an accident and he should come immediately at the spot of incident. Thus, after reaching at the spot of incident, he lodged the report against the unknown person alleging that unknown vehicle had dashed the vehicle of his father.

6. The Investigating Officer has received one letter from the Local Crime Branch stating that it revealed during the interrogation with the present applicant that he has enmity with the deceased from last 30 years and also gave a confessional statement that he has eliminated the deceased by assaulting him by means of iron rod. The investigating agency also placed reliance on the CCTV footage. The said CCTV footage panchnama is also drawn from which it reveals that the CCTV footage is only to the extent that one motorcycle was kept on the road restraining the vehicle which is coming from the opposite side and two persons get down from that said vehicle and proceeded towards the Kaccha road. As per as the allegation in the letter is concerned, the CCTV footage is completely silent about the same that these two persons have assaulted the deceased by means of iron rod. Besides this weak evidence, the prosecution placed reliance on the memorandum statement of the present applicant and the discovery of the weapon which was found in a concealed condition. Whether that discovery is in view of Section 27 of the Indian Evidence Act or not is a matter of evidence. At this stage, there were no blood stains on the said incriminating weapon. Thus, considering the nature of the evidence, which is insufficient to connect the present applicant. Moreover, the investigation is already completed, 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 **Sunil s/o Dhaniram Bhongade** shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety of the like amount, in connection with Crime No.520/2023, registered with Police Station Gondia (Gramin), District Gondia.
- (iii) The applicant shall attend the concerned Police Station once in a month on 1st of every month and the Investigating Officer shall record his presence.
- (iv) The applicant shall not leave the jurisdiction of the Gondia District without prior permission of Gondia District Court.
- (v) The applicant shall not induce, threat or promise any witnesses who are connected with the present crime.
- (vi) The applicant shall not enter into the vicinity of Chandrashekhar Ward Shrinagar Gondia, till culmination of the trial.
- (vii) The applicant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.
- (viii) The observations while passing the bail order are primary in nature and the trial

(6)

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Court shall not be influenced by the said observations.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate