



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

CRIMINAL APPLICATION (BA) NO.530 OF 2024

Rahul Onkar Tripathi

Vs.

State of Maharashtra, Through Police Station Ramdas Peth, Akola,
District Akola

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

Court's or Judge's orders

Mr. S. C. Sirsat, Advocate for applicant.

Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18/07/2024

1. The applicant came to be arrested on 12.06.2023 in connection with Crime No.226/2023 registered with Police Station Ramdaspath, Akola, District Akola for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by API Jitesh Manohar Kanpure who alleged that on 11.06.2023 from 11.00 p.m. to 6.00 a.m. of the next day i.e. 12.06.2023, he was on duty as a night Round Officer. When he was on patrolling duty, he has received the information from an unknown person, informing that the quarrel is going on at Gate No.2 of Railway Station. Upon receiving such information, the complainant proceeded towards the said spot and

found that one person was lying in the pool of blood and one person was assaulting him by kicks and by means of a knife. He immediately restrained the said person assaulting the deceased, taken him into the custody and brought him to the Police Station. On the basis of the said report, police have registered the crime.

3. During the investigation, the Investigating Officer has recorded the several statements of the eyewitnesses. The injured was taken to the hospital but during treatment, he succumbed to the death.

4. Learned Counsel for the applicant submitted that as far as the assault by the present applicant is concerned, there is no direct evidence to show that the applicant has assaulted the deceased by means of a knife. He further submitted that the statements of the eyewitnesses are inconsistent with each other and not pointing out regarding the involvement of the present applicant. The evidence collected by the investigating agency itself is doubtful. He further submitted that now, the investigation is completed, charge-sheet is filed and there is no reason to curtail the liberty of the present applicant.

5. In support of his contention he placed reliance on **Sachin s/o Dnyaneshwar Fulkar Vs. State of Maharashtra through Police Station**

Officer, Police Station, Hinganghat, District Wardha in Criminal Appeal No.248/2016 dated 21.06.2019, Sanjay Chandra Vs. Central Bureau of Investigation reported in **AIR 2012 SC 830** and **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in **2022 ALL SCR (Cri) 2193**.

6. Per contra, learned APP strongly opposed the said application and invited my attention towards the various statement of the eyewitnesses which shows that the applicant has assaulted the deceased by means of knife. He also invited my attention towards the CCTV footage which shows that it was the present applicant who has given repeated blow by the said knife is visible from the said CCTV footage. Thus, there is *prima facie* material against the present applicant to show his involvement in the alleged offence. He also submitted that postmortem report shows that eight injuries are found on the person of the deceased. Thus, it sufficiently shows that repeatedly the deceased was assaulted by the present applicant and the other co-accused which resulted into his death, in view of that, the application deserves to be rejected.

7. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the informant has seen the present applicant holding

knife in his hand and assaulting the deceased. During the investigation, the Investigating Officer has also recorded the statements of the eyewitnesses which shows that one of the co-accused has taken out a knife from the Dikki of the vehicle and handed over to the present applicant and present applicant has given repeated blow on the person of the deceased. It further reveals that other co-accused have also assaulted him by fist and kick blows and also by stone. The postmortem report which is placed on record shows in all eight injuries are found on the person of the deceased. Out of that, injury No.1 and injury No.8 are the stab injuries. The impact of the blow can be seen from the internal injuries which shows that injury Nos.1 and 8 of column No.17 are caused due to pointed and sharp edged weapon, injury Nos.3, 4, 5, 6 and 7 of column No.17 are caused due to hard and rough surface, injury No.2 of Column No.17 is caused due to hard and blunt object. Not only the stab injuries are sustained by the deceased but there is underscalp hematoma of size 6 cm X 4 cm present over left temporal region, dark red in colour. The cause of the death of the deceased is hypovolemic shock due to stab injury. Thus, not only the statements of the eyewitnesses which are consistent but medical evidence also corroborates the same. So there is a *prima facie* material against the present applicant to connect him with the alleged offence.

8. As far as the decision on which the applicant placed reliance on **Sachin s/o Dnyaneshwar Fulkar** (supra) is concerned, the Division Bench of this Court has discarded the evidence as there was statement of the eyewitness after three days and it is not explained. Thus, that observation is on the basis of the evidence recorded before the learned trial Court.

9. As far as the observation of the Hon'ble Apex Court in the **Sanjay Chandra** (supra) is concerned which shows that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. At the same time, Hon'ble Apex Court observes that it is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in that case.

10. In the case of **Satender Kumar Antil** (supra) wherein also categories of bail and guidelines for the Investigating Agencies are laid down by the Hon'ble Apex Court. It is well settled that while considering the bail application the bail is

the rule and jail is the exception but at the same time the considerations for bail are to be taken into consideration including the gravity of the offence, the punishment provided for the said offence, the manner in which the offence is committed and the apprehension of tampering of the witnesses as well as apprehension of fleeing away of the accused.

11. Thus, considering these parameters laid down by the Hon'ble Apex Court in a catena of decisions if the facts of the present case are taken into consideration, it reveals that the deceased who was alone was assaulted by the present applicant and other four accused. The injury sustained by the deceased sufficiently demonstrates in what manner he was assaulted and no remorse was shown to him.

12. Considering the gravity of offence for which punishment of life imprisonment is provided and the manner in which the deceased was assaulted and eliminated is to be taken into consideration. Considering the *prima facie* material against the present applicant, the application deserves to be rejected. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)