



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

CRIMINAL APPLICATION (BA) NO.539 OF 2024

Raju @ Rajesh s/o Ramdas Pande
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Manora, District Washim

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

Court's or Judge's orders

Mr. S. D. Chande, Advocate for applicant.
Mr. C. A. Lokhande, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/07/2024

1. The applicant came to be arrested on 16.07.2022 in connection with Crime No.379/2022 registered with Police Station, Manora, District Washim for the offence punishable under Section 302 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of First Information Report lodged by brother of the deceased namely Raju Dattaram Bawane on an allegation that on 15.07.2022 at about 5.30 p.m. he was informed that his brother was assaulted by the present applicant by sickle and his brother sustained injury. He immediately rushed to the spot and found his brother unconscious condition. He immediately took him to the hospital. His brother has sustained injuries on his chest. On the basis of said report, police have

registered the crime against the present applicant. During the investigation, the statement of the son of the deceased, who alleged to be an eyewitness was recorded.

3. Learned Counsel Mr. Chande for the applicant submitted that as far as the statement of the son of the deceased under Section 164 of the Code of Criminal Procedure is concerned, it is recorded after one month of the incident. He submitted that the son of the deceased was not at all present, but the statement made by him is the result of the tutoring. He also pointed out inconsistency between the statement of the wife of the deceased and the statement of the son of the deceased and submitted that it creates doubt about the prosecution case. Now, the investigation is already completed, charge-sheet is filed. The applicant is behind bars since the date of his arrest i.e. approximately of two years, there is no progress in the trial, further incarceration of the present applicant is not required, in view of that, the application deserves to be allowed. He further pointed out that though the names of the eyewitnesses are specifically mentioned in the FIR, the Investigating Officer has not recorded the statements of the eyewitnesses. Thus, entire investigation itself is doubtful, considering the same, the applicant be released on bail.

4. Learned APP strongly opposed the said application and submitted that after lodging the FIR immediately the statement of the son of the deceased was recorded who is the eyewitness of the incident and who has witnessed the applicant assaulting the deceased. Thus, considering the *prima facie* case against the present applicant, 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 from which it reveals that the informant is not the eyewitness of the said incident he came to know about the incident from third person. As per his statement, when he went there, two persons were already present, who have witnessed the incident namely, Nana Ratan Godmale and Ratan Godmale whose statements are not recorded by the investigating agency.

6. It further reveals from the investigating papers that the statement of the son of the deceased was recorded, who stated before the investigating agency that at the time of the alleged incident, he was along with his father and he had been in the flour mill, at that time his father was assaulted by the present applicant by sickle on his chest and his father sustained injuries. But the statement of the wife of the deceased who is the mother of the child disclosed that after receipt of the information, she along with

her son went to the flour mill and saw the present applicant assaulting the deceased. Thus, the inconsistent statements are there which creates doubt about the prosecution case. At this stage, it would not be appropriate to comment on the nature of the evidence, but considering now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. Moreover, the applicant is behind bars since last two years and there is no progress in the trial, charges are not yet framed. Considering the inconsistency as well as the investigation is completed and charge-sheet is filed, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Raju @ Rajesh s/o Ramdas Pande** shall be released on bail in connection with Crime No.379/2022 registered with Police Station, Manora, District Washim for the offence punishable under Section 302 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned Police Station once in a month of 1st day of every month and the Investigating Officer shall record his presence.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicant shall not enter into the vicinity of village Karli, Taluka Manora, District Washim, till the culmination of the trial.

(vi) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)