



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

CRIMINAL APPLICATION (ABA) NO.446 OF 2024

Mohammad Asim Mohammad Jabir Ansari

Vs.

State of Maharashtra, Through Police Station Officer, Arni,
District Yavatmal

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

Court's or Judge's orders

Mr. Anil Mardikar, Senior Advocate a/b Mr. Yuvraj Dhande, Advocate for
applicant.

Ms. Trupti Udeshi, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 23/07/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.342/2024 registered with Police Station, Arni, District Yavatmal for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. The accusation against the present applicant is on the basis of report lodged by Nitin Narayan Chaudhari on an allegation that on 13.04.2024 at about 4.30 p.m. wife of his elder brother namely Pratiksha Chaudhari with her niece Akshara, Aaradhya and wife of his another brother namely Jaya and niece Renu had gone to river for immersing Nirmalya. It is further alleged that while

immersing Nirmalya deceased Aaradhya Chaudhari had gone into the water due to slip and to save her from the water other two ladies had also gone into the water, but they died due to drowning.

3. It is alleged that the present applicant who was the Contractor had illegally mined the sand from the basin of river by using boat and JCB machine by infringing rules, therefore there was big ditch due to excessive mining of sand and therefore, the applicant is responsible for the said death. On the basis of the said report, police have registered the crime against the present applicant.

4. Learned Senior Counsel Mr. Mardikar for the applicant submitted that the applicant is having permit to excavate the sand and accordingly he has excavated the sand. There was no intention to cause any death of the deceased. At the most, the offence comes under Section 304-A of the Indian Penal Code and not under Section 304 of the Indian Penal Code. He submitted that considering the statements are already recorded and relevant investigation is already carried out, the custodial interrogation of the present applicant is not required.

5. Learned APP strongly opposed the said application and invited my attention towards various statements of the witnesses and submitted that the offence falls under Section 304 of the Indian Penal

Code as the applicant was having every knowledge and despite of that, he has excavated the sand illegally by using the JCB and therefore, the intention and knowledge can be attributed to the present applicant to cause the death of the deceased.

6. After hearing the learned Senior Counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as various statements recorded during the investigation from which it reveals that the applicant was assigned with the contract to excavate the sand however, while excavating the sand, he has used the JCB machine by infringing the rules and therefore, there was a big ditch. As far as the death of the deceased is concerned, it appears that they were also having knowledge regarding the ditch is there and thereafter also, they entered into the water and death is caused due to drowning. At the most, the knowledge can be attributable to the present applicant and therefore, at the most the offence will cover under Section 304 part II. As far as the custodial interrogation is concerned, which is not required as nothing is to be recovered from the present applicant. In view of that, and considering the gravity of the offence, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

ORDER

(i) In the event of arrest in connection with Crime No.342/2024 registered with Police Station, Arni, District Yavatmal for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code, the applicant **Mohammad Asim Mohammad Jabir Ansari** shall be released on anticipatory bail on executing a PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(ii) The applicant shall attend the concerned Police Station once in a week on Sunday between 10.00 am. to 1.00 p.m. and shall cooperate with the investigating agency.

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

(iv) The observation is *prima facie* in nature and the trial Court shall not be influenced by the same.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)