



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

CRIMINAL APPLICATION (BA) NO. 666 OF 2024

Dipak s/o Baliram Dandge Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.V. Navlani, counsel for applicant.

Mr. Lule, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/08/2024.

1. The applicant came to be arrested on 27/01/2024, in connection with Crime No. 11/2024 registered with Police Station Kholapur, Tahsil and District Amravati, for the offence punishable under Section 302, 323, 201, 203, 504 read with Section 34 of the Indian Penal Code, 1860 and Section 4/25 of the Arms Act, 1959.

2. The crime is registered on the basis of a report lodged by Dhammapal Shrikrushna Gawai, who is the father of the deceased, on an allegation that on 26/01/2023 at about 11.50, his nephew Utkarsha Sanghapal Gawai called him and disclosed that his son was assaulted by the co-accused, Suraj. Thereafter, he immediately started along with his wife and reached at home on 27/01/2024 at about 2.00 p.m., at the relevant time, he witnessed that damage was caused to the bed, which was lying in the house. On inquiry with the said Utkarsha, he further disclosed that Suraj and the deceased Rajesh were cooking; at that time, there was a quarrel between them. Therefore, Suraj went

home and brought his sword, he gave the blow of Sword on the bed and thereafter left the place. At about 11.00 p.m., when Rajesh, i.e. deceased had been in the house of co-accused Suraj, at the relevant time, the present applicant pushed him and assaulted him by fist and kick blows, and thereafter, the co-accused has given a blow of iron pipe on his person. Due to which, the deceased succumbed to death. On the basis of said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that, as far as the First Information Report is concerned, the only allegation against the present applicant is that he has been assaulted by means of fist and kick blows and pushed him. The said information was received by the informant from Utkarsh, who is the nephew of the informant. Subsequently, the statement of the Utkarsh was recorded on the next day, wherein he has improved the version and disclosed that present applicant has assaulted the deceased by means of iron pipe. The iron pipe was recovered at the instance of the co-accused. The clothes of the present applicant were also seized, which were not having any blood stains. As far as the co-accused is concerned, his blood-stained clothes were seized by the police. Thus, considering the inconsistency between the information given to the informant by the eye-witness Utkarsh and his subsequent statement, which is improved by him, now the investigation is 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 said application on the ground that the statement of the eye-witness clearly shows the role of the present applicant and his involvement in the alleged incident. Considering the gravity of the offence, though the investigation is completed, there is every likelihood of tampering with the witnesses by the present applicant. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that the First Information Report was lodged by the father of the deceased on the basis of the information received by him from Utkarsh Gawai, who is allegedly the eyewitness of the incident. While giving the information to the father, the said Utkarsh has not disclosed that the present applicant has assaulted the deceased by means of the iron pipe. However, when his statement was recorded the next day, he has improved his version and stated that the present applicant had assaulted the deceased by means of an iron rod. The Post Mortem report shows that only three injuries are on the person of the deceased, i.e., in the nature of lacerated wounds. As far as the injuries by sword are concerned, which are not appearing from the Post Mortem report.

6. Thus, considering the inconsistency between the statement of the informant and the statement of the eye-witness, and the incriminating weapon is also recovered at the instance of the co-accused. The blood stained clothes of the co-accused were also recovered. As far as the present applicant is concerned, except the belated statement of the said eye witness, which is inconsistent with the first information report and sufficiently shows that he has subsequently improved the version, now, investigation is already completed and charge-sheet is already filed, as far as further incarceration of the present applicant is concerned, which is not required. Considering his role and the role attributed to him, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order;

- a] The criminal application is allowed.
- b] The applicant- Dipak s/o Baliram Dandge shall be released on bail, in connection with Crime No. 11/2024 registered with Police Station Kholapur, Tahsil and District Amravati, for the offence punishable under Section 302, 323, 201, 203, 504 read with Section 34 of the Indian Penal Code, 1860 and Section 4/25 of the Arms Act, 1959, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall not enter into the vicinity of village Darapur, Tah. Daryapur, District Amravati till the culmination of the trial.
- d] The applicant shall attend the concerned police station twice in a month on 1st and 15 day of every month between 10.00 a.m. to 01.00 p.m. and investigating officer shall record his presence.
- e] The applicant shall not leave the jurisdiction of District Court, Amravati without prior permission of the Court.
- f] The applicant shall attend the proceedings before the Additional Sessions Judge, Amravati regularly without seeking any exemption unless there are exceptional circumstances.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]