



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

CRIMINAL APPLICATION (BA) NO. 685 OF 2024

Kishor Kathalal Tode and another **Vs** State of Maharashtra and another

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

Court's or Judge's Order

Mr. R.M.Daga, counsel for applicants.

Mr. A.J. Gohokar, APP for non-applicant/State.

Mr. Yash Kullarwar, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/08/2024.

1. Applicant No.1 came to be arrested on 31/01/2024 and the applicant No.2 is arrested on 30/01/2024, in connection with Crime No. 19/2024 registered with Police Station Sindkhed Raja, District Buldhana for the offence punishable under sections 302, 341, 143, 147, 148, 149, 323, 324, 504, 354, 354(A) and 354(D) of the Indian Penal Code, 1860; Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of report lodged by one Nitesh Tulshiram Kamble alleging that on 29/01/2024 at about 7.30 p.m., the brother of the informant, namely Nitesh, was going towards home by motorcycle, and his father was also coming to the house by motorcycle. While coming near Mahatma Fule School Khatikpura, Sindkhed Raja, Buldhana, the father of the informant saw that Satish and the co-accused No. 1 Suraj were quarreling. The informant stopped his motorcycle to

see what happened. During that period, the other relatives of the co-accused, Suraj also came, holding wooden logs in their hands. As per the allegations, all the accused persons have assaulted the deceased as well as the informant. As far as the present applicants are concerned, it is alleged that they have given a blow of wooden logs on the hands and legs of the deceased as well as on the person of the informant. Due to the assault and due to blow by knife to the abdominal portion of the deceased, the deceased succumbed to the death. On the basis of the said report, police have registered the crime against the present applicants as well as other co-accused.

3. Heard learned counsel, Mr. R.M. Daga for the applicants. He submitted that, as far as the role of the present applicants is concerned, regarding the assault of the deceased, general allegations are made, which are not substantiated by the post-mortem report, as the post-mortem report shows only one injury, i.e. stab wound at the lateral aspect of the left thigh of size 4 x 3x 11 cm, that injury passing deep in direction medially and upward, the margin of the injury is clean cut and parallel, and blood is oozing from the injury site. He submitted that said injury is attributed to the co-accused- Suraj. As far as the present applicants are concerned, it is alleged that they have assaulted the deceased by means of a wooden log reveals from the PM Report, even there are no marks. Thus, he submitted that applicants have not caused the death of the deceased. As far as the injuries to the informant are

concerned, which are in the nature of abrasion and blunt injury, they are simple in nature. Thus, he submitted that even accepting the prosecution case as it is, admittedly, the applicants have not caused the death of the deceased. In view of that, considering the investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required. They be released on bail.

4. Learned APP and learned appointed counsel strongly opposed the said application and submitted that there is apprehension that if the applicant/accused are released on bail, they would cause harm to the person of the witnesses. It is further submitted that the alleged incident occurred after forming the unlawful assembly. Thus, in pursuance of the common object of said assembly, the death of the deceased is caused. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicants and learned APP for the State, perused the recitals of the FIR as well as relevant statements of the witness, from which it reveals that the allegation against the present applicants is to the extent of assault by wooden log. Admittedly, the P.M. report nowhere reveals that any injury is caused by the wooden log. As far as the injuries sustained by the informant is concerned, which are in simple in nature. Considering the role attributed to the present applicants, they have made out a case for grant of bail. Accordingly, I proceed the following order;

- a] The criminal application is allowed.
- b] The applicants (1) Kishor s/o Kathala Tode (2) Rameshwar @ Ram Kathala Tode shall be released on bail, in connection with Crime No. 19/2024 registered with Police Station Sindkhed Raja, District Buldhana for the offence punishable under sections 302, 341, 143, 147, 148, 149, 323, 324, 504, 354, 354(A) and 354(D) of the Indian Penal Code, 1860; Section 8 and 12 of the Protection of Children from Sexual Offences Act, on executing P.R. Bond of Rs. 25,000/- each with one solvent surety in the like amount.
- c] The applicants shall not enter into the vicinity of village Sindkhed Raja, Tah. Sindkhed Raja, District Buldhana till culmination of the trial.
- d] The applicants shall attend the concerned police station once in a month on 1st of every month till culmination of the trial and the concerned police station officer shall record their presence.
- e] The applicants shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

- f] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- g] The contravention of any of the conditions would lead to the cancellation of bail.
- h] The fees of the appointed counsel be quantified as per Rule.

The criminal application stands **disposed of**.

[URMILA JOSHI-PHALKE, J.]