



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

CRIMINAL APPLICATION (BA) NO. 814 OF 2024

Sheikh Farukh Sheikh Husain

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Kalmana, District Nagpur

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

Court's or Judge's orders

Mr. P. K. Bezalwar, Counsel for the applicant.

Mr. S. A. Ashirgade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/09/2024

1. By this application, the applicant is seeking bail in connection with Crime No.1001/2023 registered with Police Station, Kalmana, District Nagpur for the offences punishable under Sections 302 and 324 read with Section 34 of the Indian Penal Code. The applicant came to be arrested on 19.12.2023.

2. The crime is registered on the basis of the report lodged by the informant on an allegation that on 18.12.2023 at about 10.30 p.m., he was standing near the Hotel Taj along with his friend and Pan Shop owner. At about 11.00 p.m., he had been to washroom, at that time, he heard loud noise of the deceased – Amit Ajgar, and therefore, he immediately rushed to the spot behind the N.I.T. Complex, where he had witnessed that 3 to 4

persons were quarreling with Amit Ajgar and he tried to intervene. It is further alleged that the person who was wearing black colour jacket and another person wearing blue colour T-shirt tried to assault him. It is further alleged that other two persons were also there. It was alleged that the person who was wearing the blue colour T-shirt has assaulted the deceased by means of wooden rafter, due to which he sustained the injury and succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant. The description of the present applicant which is mentioned as the person who was wearing black colour jacket at the time of incident.

3. Learned Counsel for the applicant submitted that as far as the presence is concerned, there is no dispute that all the witnesses including the eye witnesses disclose regarding the presence of the present applicant, but no overt act is attributed to the present applicant. He submitted that it was the person who was wearing the blue T-shirt, who given a blow of wooden rafter, he is the co-accused Abhijit Turkar. Abhijit Turkar who has given the blow of wooden rafter on the head of the deceased. Death of the deceased is due to the head injury. As far as the present applicant is concerned, though it is alleged that he was also holding weapon in his hand, but no overt act is attributed to him. Even the postmortem report shows only one injury on the person of the

deceased i.e. linear contusion present over left parietal region situated 3 cm left from midline, of size 8 cm X 4 cm vertically placed, reddish in colour. Thus, this injury is attributed to the co-accused Abhijit Turkar. Now the investigation is completed and charge-sheet is filed. Considering that no overt act is attributed to the present applicant, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that in furtherance of common intention, the applicant and the other co-accused have assaulted the deceased and caused his instantaneous death. Thus, considering the recitals of the FIR and the statements of the eye witnesses from which it reveals that the applicant was present and all the accused including the present applicant abused and assaulted the deceased. Considering the *prima facie* material, application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the entire investigation papers from which it reveals that as far as presence is concerned, which is substantiated by the entire material which is collected during the investigation, but no overt act is attributed to the present applicant either in the FIR or by the eye witnesses of the incident. Considering now the investigation is already completed and

charge-sheet is filed and no specific role is attributed to the present applicant, the application deserves to be allowed. Accordingly, I proceed to pass following order. The application is allowed.

ORDER

(i) The application is allowed.

(ii) The applicant **Sheikh Farukh Sheikh Husain** shall be released on bail in connection with Crime No.1001/2023 registered with Kalmana, District Nagpur for the offences punishable under Sections 302 and 324 read with Section 34 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 proceeding before the Sessions Court without seeking any exemption unless there exceptional circumstances.

(iv) The applicant shall not leave the jurisdiction of Nagpur District without prior permission of the District Court, Nagpur.

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

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)