



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

CRIMINAL APPLICATION (BA) NO. 860 OF 2024

Asif s/o Imtiyaj Ali

Vs.

State of Maharashtra, Through Police Station Officer, Kalamna Police
Station, 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. Vedant Raut, Counsel h/f Mr. R. K. Tiwari, Counsel for the applicant.
Mr. U. R. Phasate, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/09/2024

1. The applicant came to be arrested on 12.06.2023 in connection with Crime No.458/2023 registered with Police Station, Kalamna, District Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Satish Rajaram Thakre on an allegation that he is residing along with his parents and deceased brother Atish @ Warfate Baba Rajaram Thakre. On 11.06.2023, his brother left the house and not returned back. On the next day, the dead body of the deceased was found near the Shani Mandir, therefore, he went at the spot and saw the dead body. On seeing the dead body, it revealed to him that his brother has sustained various injuries on the various parts of the body. On the basis of the

said report, police have registered the crime against the unknown person.

3. During the investigation, statements of the various witnesses are recorded from which it reveals that on the earlier night i.e. on 11.06.2023 at about 10.00 p.m. the present applicant and deceased and other witnesses namely Badal, Nikhil and Rakesh were together and were playing Ludo on the mobile phone and thereafter, on the next day, the dead body of the deceased was found. As the deceased was seen lastly in the company of the present applicant, he was arraigned an accused.

4. Heard learned Counsel for the applicant who submitted that except the last seen circumstance, there is no other material during the investigation to show the connection of the present applicant in the alleged offence. He submitted that the entire case is based on the circumstantial evidence and when the circumstances which are not sufficient to connect the present applicant with the alleged offence, no *prima facie* case is made out against the present applicant. Considering the investigation is completed and charge-sheet is filed, the applicant be released on bail.

5. Learned APP strongly opposed the said application on the ground that the nature of the offence is grievous. The deceased has sustained the

grievous injuries on the scalp. Death of the deceased due to head injury. On the earlier night, the deceased was found in the company of the present applicant and other co-accused and thereafter, the deceased was not seen alive by anybody. Thus, though prosecution relied upon only circumstance, but it is a strong circumstance to connect the present applicant with the alleged offence. In view of that, application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. There is no dispute as to the fact that the death of the deceased is caused due to the head injury. As far as the nature of the evidence is concerned, the entire prosecution case rested on the circumstantial evidence i.e. only one circumstance i.e. the last seen. The deceased and the present applicant lastly seen together at about 10.00 p.m. and thereafter none has seen the present applicant and the deceased either proceeding together or in the company of each other. There is a long gap between the circumstance of last seen and the finding of the dead body. So, the intervention of any other third person cannot be ruled out. Besides the last seen theory, there is no other material to connect the present applicant. The investigation is completed and charge-sheet is filed. Considering the nature of the evidence collected during the

investigation, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Asif s/o Imtiyaj Ali** shall be released on bail in connection with Crime No.458/2023 registered with Police Station, Kalamna, District Nagpur for the offence punishable under Section 302 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 not leave the jurisdiction of the District Court, Nagpur without prior permission of the District Court, Nagpur.
- (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- (v) 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.)