



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

CRIMINAL APPLICATION (BA) NO. 838 OF 2023

Naeem Khan Rahim Khan

Vs.

State of Maharashtra, Thru. PSO, PS Dhanaj, District – Washim

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Mohd. Amin, Advocate a/w Mr. Juned M. Khan,
Advocate for applicant.
Ms. Soniya Thakur, APP for non-applicant/State.

CORAM : SMT. URMILA JOSHI PHALKE, J.

DATE : 24.07.2024

The applicant came to be arrested on 22.06.2022 in connection with Crime No.133/2022 registered with Police Station Dhanaj, District – Washim, for the offence punishable under Sections 143, 147, 148, 149, 307, 324, 504 read with Section 145 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by one Vishal Rajesh Pachpor alleging that on the day of incident i.e. on 20.06.2022, he received the information from one Anil Charate that the applicant is abusing his father near pan stall of one Limote which is situated at near Kamargaon bus

stop. Accordingly, he proceeded towards the spot along with his friend Prashant Gawande and at the same place, one Irfan Kazi was there. At that time, there was a hot exchange of between them and the present applicant has carried his father on the motor cycle towards Karanja road. Therefore, the complainant along with his friend proceeded towards the Karanja road and said Irfan Kazi followed them and at that time, complainant noticed that near Shetkari Bhawan and automobile shop of one Dolas, dispute was going between his father and the present applicant. The brother of the present applicant also joined them. In the meanwhile, the brother of complainant Vaibhav came along with his friend Prashant Surjuse and Ajay Lokhande and others and tried to pacify the dispute, at the relevant time, the applicant took out the knife from his hand pocket and gave a blow on the abdomen of said Vaibhav as well as over the abdomen of the father of the complainant. The complainant has also received the injury in the said incident. On the basis of said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that in the alleged incident, the present

applicant has also sustained the injuries thus, there was a free fight but the report regarding the incident on the assault of the present applicant was not registered by the investigating agency, which shows the demeanor of the investigating agency while dealing with the above said crime. He further submitted that other co-accused are already released on bail by the Sessions Court as far as the present applicant is concerned, he is behind bar since 22.06.2022, and there is no progress in the charge. He further submitted that even on the merits of the matter also, investigation is already completed, charge-sheet is already filed, further incarceration of the present applicant is not required. During the free fight, the injured have sustained the injuries as well as the applicant has also sustained injuries. He submitted that this fact is suppressed by the investigating agency and the injury sustained by the present applicant are not explained by the investigating agency. In view of that, the applicant be released on bail. In support of his contention, he placed reliance on the order of this Court in Criminal Application (BA) No.500/2020 and Criminal Application (ABA) No.721/2020.

4. Learned APP strongly opposed the said application and submitted that as far as delay in trial is concerned, which is brought on account of the prosecution but, it is on account of the other co-accused who remained absent and therefore, charge was drafted. She further submitted that as far as the merit of the matter is concerned, the present applicant has taken the father of the informant on his motor cycle at Karanja road and thereafter, assaulted him and when the father injured witness intervened in the quarrel, he was also assaulted. Thus, by hatching the conspiracy, the father of the informant was taken and assaulted by the present applicant and when the injured Vaibhav has intervened in the quarrel, he was given a blow of knife. The preparation of the present applicant reveals from the investigation papers that he was carrying the knife with him and he carried the father of the informant at some place and thereafter, started assaulting him. Thus, the manner in which, the alleged incident has taken place is to be taken into consideration. She submitted that it is not suddenly they met each other and there was a quarrel and out of that quarrel and during the scuffle, the injury was caused but it was the present applicant, he took the father of the informant at

some distance, informant injured Vaibhav followed them. Injured Vaibhav and father of the informant as well as informant were assaulted by the present applicant and the other co-accused. As far as the role of the present applicant and brother co-accused is concerned, which is different and therefore, parity is not applicable to the present applicant. It was the present applicant, who was carrying the knife along with him and given a blow of knife on the vital part of the body. Thus, *prima facie* case is made out against the present applicant. There are criminal antecedents against him, in view of that, the application deserves to be rejected.

5. After hearing the learned counsel for the applicant and learned APP for the State. Perused the investigation papers, from which, it reveals that on 06.10.2022 the informant came to know that there was some quarrel between his father and the present applicant, therefore, he immediately went towards the said place. He also witnessed that present applicant took his father on his motor cycle and proceeded on Karanja road and therefore, the informant and his friend followed them. At the relevant time, Vaibhav has also come along with his friend and present applicant has assaulted the father

of the informant by means of knife. The father of the informant as well as that Vaibhav who intervened with the quarrel have sustained the grievous injuries due to the blow by knife on the vital portion of the body. Thus, *prima facie* case is made out against the present applicant.

6. Learned counsel relied upon the two orders passed by this Court. On perusal of the said orders, the facts shown in one of the order is that deceased was aggressor, who inflicted knife blow on the applicant. By considering the same, the bail was granted in another Criminal Application No.721/2020, facts shows that there were rival virtuals and the applicant had also sustained the injuries which are grievous in nature and therefore, the Court has considered the bail application.

7. As far as the fact of the present application are concerned, which shows that it is not that both the parties met face to face and during the scuffle, the assault was during free fight but, the fact shows that the applicant has taken the father of the informant on his motor cycle at some place and thereafter, assaulted him and when the other injured intervened in the quarrel, he was also assaulted.

Thus, the act executed by the present applicant is by pre-planned and pre-mediation etc.

8. As far as the another ground raised by the present applicant regarding the delay in trial, the roznama which is placed on record shows that since the committal of the case before the Sessions Court, the charge was not framed as on various occasions. The accused who were released on bail were absent and for this act, the prosecution cannot be blamed for delay in trial. Considering the roznama, it is not that due to the fault on account of the prosecution agency, the trial was not proceeded but, it is because of the absence of the other co-accused the trial was not proceeded. There is no dispute as to the fact of right of the present applicant of a speedy trial but, for that purpose, securing the presence of the other co-accused is also required. Considering that, due to absence of the other co-accused, the trial was not proceeded and the present applicant cannot take the benefit of the same, for releasing himself on bail.

9. Considering the *prima facie* case against the present applicant and trial is not held up due to the non-progress in the trial, on account of the efforts by the prosecution but it is the absence of the

some of the accused, the trial was held-up. In view of that, the application deserves to be rejected. Hence, application is rejected.

10. The trial Court shall expedite the trial and dispose of the trial expeditiously.

11. The criminal application is disposed of accordingly.

(SMT. URMILA JOSHI PHALKE, J)