



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.1907 OF 2024

IN

CRIMINAL APPLICATION (BA) NO.845 OF 2024
(Swapnil s/o Chandrakant Kashikar 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. A.S. Mardikar, Sr. Advocate a/b Mr. R.R. Vyas, Advocate for the applicant.
Mr. D.V. Chauhan, Public Prosecutor a/b Mr. S.A. Ashirgade, Addl.PP for the State.
Mr. A.M. Chandekar, Advocate for Assist to Prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- OCTOBER 18, 2024

This application is made by father of the deceased for seeking permission to engage the Counsel to assist the prosecution.

2. In view of the reasons mentioned in the application, permission is granted to engage the Counsel to assist the prosecution.

3. The application is disposed of.

CRIMINAL APPLICATION (BA) NO.845 OF 2024

By this application, the applicant is seeking bail as he came to be arrested on 26/01/2024 in connection with Crime No.84/2024 registered with Police Station Ram Nagar, Chandrapur for the offence punishable under Sections 302, 143, 147, 148, 120-B read with

Section 149 of the Indian Penal Code, Section 4/25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act.

2. The crime is registered on the basis of the report lodged by Nilesh Bhagwan Hiwrale on an allegation that on 26.01.2024 he and one Shiva Milind Wazarkar were contractors. The deceased Shiva and one of the accused by name Himanshu were earlier working with the present applicant. The deceased Shiva and other accused Himanshu were used to look after the contract work of the present applicant. Subsequently, the deceased has left the work of the present applicant. It is further alleged the present applicant has purchased two wheeler having Registration No.MH-34-1500 in the name of deceased. The said vehicle was on loan however as the loan instalment was not paid regularly, there were disputes between the applicant and the deceased Shiva. The other accused by name Himanshu was again joined the company of the applicant and both were having grudge against the deceased. On 25.01.2024, at around 8.00 PM the deceased Shiva was talking with his friend. At the relevant time, Himanshu who is the co-accused called the deceased and abused him in a filthy language. The co-accused Himanshu called the deceased in front of the office of present applicant thereafter the deceased and his friend went there, at that time, the present applicant was also present. The present applicant and the other co-accused

assaulted the deceased and the co-accused Himanshu has given a knife blow on the vital part of the deceased due to which deceased succumbed to the death and other co-accused have assaulted by means of fist and kick blows. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Senior Counsel for the applicant submitted that as far as the allegations are concerned wherein it is alleged that the deceased earlier working with the present applicant and subsequently he left the work and there was previous dispute between them. As far as the incident is concerned, he submitted that there is no allegation that either present applicant has assaulted the deceased by means of any weapon or by fist and kick blows, only his presence was there. No overt act is attributed to him. He submitted that considering the allegations against the co-accused Nazir Rafique Sheikh that he assaulted the deceased by means of fist and kick blows is already released on bail by this Court. Thus, considering the aspect that other co-accused against whom the allegation of the assault by fist and kick blows is already released on bail, the case of the present applicant is on better footing as his involvement is not in an actual assault, and therefore, he be released on bail.

4. Learned Public Prosecutor (Senior Counsel) strongly opposed the application and submitted that there

are criminal antecedents against the present applicant. The entire incident occurred at the behest of the present applicant only. Though no overt act is attributed to him but considering the fact that initially the deceased was working along with the present applicant. Subsequently, he left the work. The present applicant has purchased the vehicle in the name of the deceased and not paid the amount towards the instalment. Therefore, there was a dispute between them. On that count, as the deceased has enmity with the present applicant, deceased was called in front of the office of the present applicant and present applicant and other co-accused have eliminated the deceased by giving knife blows as well as by fist and kick blows. Thus, in furtherance of common object the deceased was eliminated. Considering all these aspects the application deserves to be rejected. He invited my attention towards the statement of one Raj Samayya Sopar and submitted that his statement specifically shows the role of the present applicant that present applicant was not only present there but he instigated the other co-accused and on his instigation, the deceased was assaulted by the co-accused and was eliminated. In fact, present applicant is the root cause of the entire incident. Thus, considering the criminal antecedent against the present applicant and the entire incident occurred at the behest of the present applicant, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the applicant has a criminal background, in all 10 offences are registered against him. Though from the some of the offences he is acquitted but still there are some offences pending against him. As far as the involvement of the present applicant in the alleged incident is concerned, from the perusal of the statement it reveals that there was a previous enmity between the present applicant and the deceased on account of the fact that deceased has left the work of the present applicant which is disliked by the present applicant. The applicant has also purchased the vehicle in the name of the deceased and not paid the instalment, therefore, deceased made enquiry with him and on that count also there was a dispute between them.

6. Learned Senior Counsel of the applicant vehemently submitted that as there is a direct evidence, motive has no substance. Admittedly, when direct evidence is available motive takes back it, but at the same time, it has to be considered that in what circumstances the alleged incident has taken place. The circumstances which appears from the statements of the various witnesses shows that it was the co-accused who called the deceased, abused him and called him in front of the office of the present applicant, the present applicant was also present there. Thereafter present applicant came along

with the co-accused who was holding the knife in his hand. During the altercation of the words, the co-accused has given the knife blows on the person of the deceased. Thus, present applicant was the member of the unlawful assembly. A plain reading of Section 149 makes it clear that an overt act of some of the accused persons of an unlawful assembly with the common object to kill the deceased and to cause grievous hurt to him is enough to show his involvement in the alleged offence. The applicant is not only the member of the unlawful assembly but the entire cause behind the alleged incident is the present applicant only. Thus, root cause of the entire incident is the present applicant. Considering the criminal antecedent against him, it reveals that the applicant is a habitual offender and his involvement in the similar type of the offences. Thus, *prima facie* case is made out against the present applicant. This is not a fit case wherein the discretion can be used in favour of the present applicant. In view of that, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)