



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

CRIMINAL APPLICATION (BA) NO. 871 OF 2024

Mahendra s/o Jagatram Bhurkude 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

Mrs. Mehta, counsel for applicant.

Mr. D.V. Chauhan, Public Prosecutor (Senior Counsel) with Mr. S.V. Narale, APP
for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/10/2024.

1. The applicant came to be arrested on 15/10/2022, in connection with Crime No. 473/2022 registered with Police Station Salekasa, District Gondia for the offence punishable under Sections 302, 394, 397 read with Section 34 of the Indian Penal Code, 1860, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of a report lodged by Vishwanath Balkrushna Motghare, on an allegation that on 09/10/2022, at around 7.00 p.m., when he was returning from Bhandara Road Railway Station to his village Salekasa, he boarded the Howrah-Ahmedabad Train from Bhandara Railway Station. In the said train, he met deceased Gopal Bawankar, who was residing at village Nimba, which is near the village of the informant. It is further alleged that deceased was not having a vehicle to go to the village of Nimba, and therefore, he had taken Gopal Bawankar on his vehicle from Amgaon to Rodha. When they were proceeding,

Gopal Bawankar had made a phone call to one Chaudhary from his village and informed him that he was not having a vehicle and he would be coming along with the complainant till village Rodha. While coming towards village Salekasa at around 9:15 to 9:45 p.m., on the road from Pangaon to Salekasa, near the turning of Pangaon Lake, three unknown persons, between the ages of 20-25 years, stopped the vehicle of the complainant/informant. They were having wooden rafters in their hands and in the light of his vehicle he could only see the faces of one person. They assaulted him as well as the deceased Gopal Bawankar by means of wooden rafters. One of the accused persons assaulted the complainant on his head, and another accused person assaulted on the head of Gopal Bawankar, due to which the deceased sustained grievous injuries and succumbed to death.

3. It is further alleged that they have also snatched the cash amount from them and their mobile phones. On the basis of the said report, police have registered the crime against the present applicant.

4. Heard learned counsel Mrs. Mehta for the applicant, who submitted that, as per the recitals of the FIR, three persons were there, whereas during the investigation, four persons were arraigned as an accused. The description narrated by the informant does not match and also clothes seized from the present applicant. She further pointed out that the statements of the two witnesses are recorded by one witness, Rahul Mohanlal Sahare, who has described the

persons to whom, along with weapons in their hands; that description also does not match the clothes of the present applicant, which are seized. Thus, except the T.I. parade, there is no material to connect the present applicant. No statements are recorded subsequent to the T.I. parade to ascertain the role of the present applicant. In view of that, now the investigation is completed and charge-sheet is filed. Considering the nature of the evidence collected, the applicant be released on bail. There are no criminal antecedents against him. In view of that, the application deserves to be allowed.

5. Learned Public Prosecutor and learned APP strongly opposed the said application and submitted that three unknown persons assaulted the deceased as well as the informant. During the investigation, the involvement of the present applicant along with other co-accused revealed from the description narrated by the witnesses shows the presence of the present applicant at the spot of the incident. Though nothing is recovered from him, considering his presence at the spot of the incident and the role attributed to the present applicant, the bail application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned Public Prosecutor with learned APP for the State, perused the investigation papers. Admittedly, the FIR is lodged against the three unknown persons. During the investigation, these three persons were put in the T.I. Parade. During T.I. parade, the present applicant is identified by the informant. The clothes of the present applicant are also seized. The

description of the clothes is also given by two persons, but the clothes are seized, and the description given does not match with each other. Admittedly, this is a matter of evidence, but at this stage, considering no specific role is attributed to the present applicant and nothing is on record to show that, it was the present applicant who has given the blow of the stick and caused the death of the deceased, hence the application deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The criminal application is allowed.
- b] The applicant -Mahendra s/o Jagatram Bhurkude, shall be released on bail, in connection with Crime No. 473/2022 registered with Police Station Salekasa, District Gondia for the offence punishable under Sections 302, 394, 397 read with Section 34 of the Indian Penal Code, 1860, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall not attend the concerned police station twice in a month at Salekasa Police Station till culmination of the trial.
- d] The applicant shall not leave the jurisdiction of the Gondia District without seeking permission of the District Court Gondia.

- e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f] The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
- g] The applicant shall not indulge himself in similar type of the offences.
- h] Contravention of any of the condition would lead to the cancellation of bail.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]