



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

CRIMINAL APPLICATION (BA) NO.898 OF 2024

Ramdas s/o Bhaurao Gangawane

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Aasegaon, District Washim

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

Court's or Judge's orders

Mr. A. M. Jaltare, Counsel for the applicant.

Mr. H. D. Dubey, APP for non-applicant/State.

Mr. S. D. Chande, Counsel for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 11/10/2024

1. The applicant came to be arrested on 30.11.2023 in connection with Crime No.344/2023 registered with Police Station, Aasegaon, District Washim for the offence punishable under Sections 302 and 506 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the son of the deceased namely Atish Sanjay Gangawane on an allegation that on 19.11.2023 there was a dispute between the family of the informant and the present applicant as due to the tractor of the present applicant, the veranda of the house of the uncle of the informant was damaged and therefore, the applicant had a quarrel with the deceased, why he went along with his brother to

lodge a report. At that time, allegedly the present applicant has threatened the deceased. On 29.11.2023 when the informant was at the bus stand, he heard the noise of shouting, therefore, he immediately rushed towards the Gajanan Maharaj Temple, at that time, he witnessed that the present applicant was assaulted the deceased by giving a blow of bricks on his head. He immediately shifted his father in the hospital, but on the way, he succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel Mr. Jaltare for the applicant submitted that there was a previous dispute between the informant and the present applicant and therefore, the present applicant is falsely implicated in the alleged offence. He invited my attention towards the various statements of the witnesses and submitted that the prosecution has attempted to show that this accident is witnessed by the various witnesses. However, at the same time, one of the witnesses narrated the story of the incident. He invited my attention towards the statement of Vijay Madhukar Gangawane which discloses that when he was present along with the other persons at Gajanan Maharaj Temple and he received a message that the accident of deceased took place, he immediately rushed to the spot and saw that the deceased has sustained the head injury and blood was oozing from

his head. He submitted this fact is substantiated by the general diary entry also, which shows that the police have received the information that one person has sustained the injury in an accident. He also submitted that if the informant has witnessed the incident and witnessed the present applicant assaulting the deceased, though he admitted the deceased in the hospital and narrated the history, the history nowhere shows that it was the present applicant who assaulted the deceased. He further submitted that the statements of the eye witnesses are recorded after 4 to 5 days of the incident. The eye witnesses stated that the present applicant has given repeated blows on the head of the deceased but the deceased has sustained only one injury. Thus, considering these inconsistencies, he submitted that the involvement of the present applicant in the alleged offence and the occurrence of the alleged incident itself is doubtful. In support his contention he placed reliance on **Rehmat Vs. State of Haryana** reported in **(1996) 10 SCC 346** wherein it is held that complainant first going to the Primary Health Centre for medical help but non disclosing the name of the assailant to the Doctor. Name of the accused disclosed only at the time when the complaint was recorded by the Sub-Inspector of Police after about five and half hours of the incident. In the circumstances of the case, conviction of the accused under Section 307/393 not sustainable.

4. He also placed reliance on **Mahtab Singh and another Vs. State of Uttar Pradesh** reported in **(2009) 13 SCC 670** wherein it is held that unnatural conduct of the complainant adverse inference is to be drawn. Police Station hardly one furlong away from the place of occurrence.

5. In the light of the above submissions, he prays for releasing the applicant on bail.

6. Learned APP strongly opposed the said application on the ground that there is direct evidence in the nature of the eye witnesses, who witnessed the alleged incident which shows the involvement of the present applicant in the alleged incident. There was a previous enmity between them which is sufficient to show that there was a motive for the applicant to commit the murder of the deceased. In view of that, the application deserves to be rejected.

7. Learned Counsel Mr. Chande appearing for the complainant reiterated the said contention and submitted that there are consistent statements of the eye witnesses which shows the involvement of the present applicant in the alleged offence. In view of that, the application deserves to be rejected.

8. After hearing the learned Counsel for the applicant and learned APP for the State and learned

Counsel for the complainant, perused the investigation papers from which it reveals that the FIR was lodged by the son of the deceased, who stated that he heard the noise, when he was present at the bus stand and immediately he rushed towards the Gajanan Maharaj Temple and in front of the said temple, he witnessed the present applicant assaulting his father, who succumbed to the death. Admittedly, he has removed the deceased to the hospital, and though he witnessed the incident and witnessed the applicant assaulting the deceased, he has not narrated before the Medical Officer that the deceased was assaulted by the present applicant. The history narrated before the Medical Officer that his father was assaulted by somebody. Thus, the name of the assailant was not narrated immediately after the incident. One general diary entry is also a part of the charge-sheet which shows that the police have received the information that one person has received the injuries in an accident which is substantiated by the statement of Vijay Madhukar Gangawane which shows that when he was present near the Gajanan Maharaj Temple in one Kirana shop along with Balaji Gangawane, Sandip Kankal and Avinash Gangawane. He received a message that the deceased met with an accident and he immediately rushed to the spot and saw that the deceased has sustained the head injury. Thus, the inconsistent stories are on record, whether the non-disclosure of the name of the assailant is fatal to the

prosecution or not is a matter of evidence. At this stage, considering the investigation is completed and charge-sheet is filed and the circumstances under which the alleged incident has occurred and two inconsistent stories came during the investigation. Moreover, there are no criminal antecedents against the present applicant. Considering all above these facts, the applicant has made out a case for grant of bail. In view of that, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Ramdas s/o Bhaurao Gangawane** shall be released on bail in connection with Crime No.344/2023 registered with Police Station, Asegaon, District Washim for the offence punishable under Sections 302 and 506 read with Section 34 of the Indian Penal Code, on executing PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the vicinity of village Depul, Taluka and District Washim, till culmination of the trial.
- (iv) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
- (v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(7)

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9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate