



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

CRIMINAL APPLICATION (BA) NO.965 OF 2024
(Shubham @ Chakka Chotelal Biraha 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. C.B. Barve, Advocate for the applicant.
Mr. K.R. Lule, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 2, 2024

By this application, the applicant is seeking bail as he came to be arrested on 10/02/2024 in connection with Crime No.72/2024 registered with police station Nandanvan, Nagpur for the offence punishable under Section 302, 307 and 201 read with Section 34 of the IPC and Section 135 of the Maharashtra Police Act.

2. The accusation against the present applicant is on the basis of report lodged by Himanshu Bhagwanji Raut on allegation that on 09/02/2024 when he was at Ambedkar square, Shastri Nagar, Nagpur he received the message that Vishal Bhagwanji Raut and Niraj Shankar Bhoyar are assaulted by the co-accused Vilas @ Matar Ramkrushna Wankhede on account of money transaction. He immediately rushed towards the spot and witnessed that the injured have sustained injuries. They are immediately taken to the hospital but they are declared dead. On the basis of the said report, police have registered the crime against the present applicant and

other co-accused. Present applicant is arrested subsequently.

3. Learned Counsel for the applicant submitted that entire case is based on the circumstantial evidence. As far as the allegation against the present applicant is concerned it is not substantiated by any material to show that it was the present applicant who has assaulted the deceased. He submitted that the entire prosecution case is rested upon the memorandum statement of the present applicant. In fact, no information is received by the Investigating Officer as far as the memorandum statement of the present applicant is concerned. The blood stained clothes are also recovered at the instance of the mother. Thus, there is absolutely no material to connect the present applicant with the alleged offence. In view of that, the applicant be released on bail as investigation is completed. In support of his contention he placed reliance on *Anter Singh Vs. State of Rajasthan [(2004) 10 SCC 657]*.

4. *Per contra*, learned APP strongly opposed the said application and submitted that not only the blood stained clothes of the present applicant but the knife is also seized at the instance of the present applicant on the basis of his memorandum statement. Blood stains are found on the blade of the said knife. The statement of Roshan Suresh Dhole is also recorded during the investigation which shows the involvement of the present

applicant in the alleged incident. He submitted that two persons have lost their life in the said incident. The postmortem reports show that the nature of the injuries sustained by the deceased and it is not possible for one person to assault the two persons at the same time. He submitted that as far as the deceased Vishal Bhagwan Raut is concerned in all 23 injuries are found on his person which are on the vital part of the body and the death of the deceased is due to the stab injuries on chest and abdomen. Thus, injuries sustained by the deceased are on the vital part of the body. Other deceased died due to the head injury. There are criminal antecedents against the present applicant. Considering the nature of the incident and entire case is based on the circumstantial evidence, at this stage, the contention of the applicant deserves to be rejected and 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 there was some dispute between the co-accused and the deceased Niraj and Vishal on account of the money transaction. The FIR is lodged on the basis of the information received by the informant. After registration of the crime, the spot panchnama was drawn. At the spot, the blood stains are found and the samples were collected. During investigation, both the dead bodies are forwarded to the postmortem examination. Niraj Shankarrao Raut has sustained as many as 13 injuries and

another deceased Vishal Bhagwan Raut has sustained as many as 23 injuries on his person. The internal injuries are also on a vital part of the body. The death of one of the deceased i.e. Niraj is due to the head injury whereas the death of the deceased Vishal is due to stab injury on vital part of the body i.e. chest and abdomen. During investigation, the blood stained cloths of the present applicant are recovered at the instance of the mother of the present applicant. Said blood stained cloths are forwarded to the chemical analysis along with the referral letter. The Chemical Analyzer report is yet to be received. The memorandum statement of the present applicant was recorded to the extent that he will show the place where he has kept the article i.e. weapon of the offence and the vehicle. On the basis of the said memorandum statement, the police and panchas were led by the present applicant and at the instance of the present applicant the blood stained weapon is seized. It is submitted by the learned Counsel for the applicant that the said weapon is not seized on the basis of the information given by the applicant. He placed reliance on the judgment of the Anter Singh Vs. State of Rajasthan (*supra*) wherein the facts of the case shows that the gun was found in the open space. The Hon'ble Apex Court in the case of ***Pulukuri Kotayya v. Emperor (AIR 1947 PC 67)*** it is observed that the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person

accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The various requirements of the Section can be summed up as follows:

- (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- (2) The fact must have been discovered.
- (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- (4) The persons giving the information must be accused of any offence.
- (5) He must be in the custody of a police officer.
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

6. Admittedly, at this stage, evidence is not to be evaluated while considering the bail application. As far as the aspect whether it was a voluntary statement or not is a matter of evidence. On perusal of the statement recorded by the Investigating Officer in presence of the panchas shows that accused made a statement that he would show the place where he kept the articles and thereafter he led. Thus, admittedly from the investigation papers it reveals that the fact which is disclosed by the present applicant was not known to the police prior to the statement. Thus, the said fact was first time discovered on the basis of the statement of the present applicant and thereafter the said discovery was in consequence of some information received from the accused. The person giving the statement i.e. the accused was in a police custody or in the custody of the Police Officer and the said discovery of fact i.e. the place which was discovered where the articles were kept was in consequence of the information received from the accused in custody. Therefore, the contention of the learned Counsel for the applicant, at this stage, cannot be accepted that, that is not the information given by the present applicant. Admittedly, whether it was a voluntary statement or not is to be seen on the basis of the evidence which is to be recorded before the Investigating Officer. The statement of one of the witness Roshan Suresh Dhole

also shows that after hearing the noise, he immediately rushed to the spot of incident and seen that both the deceased and the co-accused were quarrelling with each other on account of the money transaction and there was one person along with them and they all have assaulted the deceased. Thus, considering the said statement, at this stage, admittedly *prima facie* case is made out against the present applicant. Considering the nature of the injuries and the number of injuries sustained by the deceased Vishal and considering the other deceased Niraj is concerned who has also sustained the 13 injuries on his person and all these injuries are on the vital part of the body from which it can be ascertained the intention of the applicant and other co-accused. At this stage, the circumstances that the blood stained clothes of the present applicant which are seized by the police as well as the weapon which is recovered at the instance of the present applicant having blood stains is sufficient to show his involvement in the alleged offence. Considering the gravity of the offence that in an incident wherein two persons have lost their life, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)