



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

CRIMINAL APPLICATION (BA) NO. 1023 OF 2024

Dnyaneshwar Ramdas Sonune

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Jaulka, 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. N. Shinde, Counsel along with Mr. Shaikh Sameer Saleem, Counsel
for the applicant.

Ms. Kavita Bhongde, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/11/2024

1. The applicant came to be arrested on 12.10.2023 in connection with Crime No.301/2023, registered with Police Station, Jaulka, District Washim for the offences punishable under Sections 302, 201 and 120-B of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Anil Dhonduji Sonune brother of the deceased on an allegation that on 09.10.2023 at about 11.00 a.m. when he was working in his field, his relative namely Narayan Katekar informed him that some person assaulted his brother and set him on fire. It was further informed that, they are taking the victim to the hospital and asked the informant to reach. Thereafter, the informant along with his relatives approached to the hospital and found that deceased Dilip Sonune was lying in unconscious

condition. He has sustained the injuries on his head and other parts of the body, subsequently, he was declared dead. On the basis of the said report, police have registered the crime against the present applicant.

3. It is further alleged that there was a previous dispute between his brother and his uncle Ramdas Sonune on account of agricultural land and litigations were pending between them. The FIR is lodged against the unknown person on suspicion that some unknown persons have assaulted the deceased by means of weapon and thereafter, thrown some substance on his person and set him on fire. On the basis of the said report, police have registered the crime against the unknown person.

4. During the investigation, the informant and the other witnesses have raised suspicion against the present applicant, who is the son of Ramdas Sonune as there was a previous dispute between the family members of the deceased and the present applicant. On that count, the applicant was arrested.

5. During the investigation, the various statements were recorded. The memorandum statement of the present applicant is also recorded. The weapons are recovered at the instance of the other co-accused and after completion of the investigation the charge-sheet was filed.

6. Learned Counsel for the applicant submitted that merely on suspicion the present applicant is arrested. As far as the investigation part is concerned, there is absolutely no material and direct evidence available with the investigating agency to show the involvement of the present applicant.

7. He invited my attention towards the communication of the investigating agency with the Judicial Magistrate First Class which shows that after lodging the FIR also the investigating agency has communicated with the Court that some unknown persons had committed the murder of the deceased, but there was a previous dispute between the present applicant and the family members of the deceased and therefore, they are suspecting that the death of the deceased is caused by the present applicant.

8. He further invited the attention towards the various statements of the witnesses and submitted that the statements of the witnesses show that they have witnessed two persons covering their faces by masks and wearing clothes i.e. blue colour pant and black colour jacket by one person and blue pant and checked shirt by one person. The said clothes are not recovered as per the memorandum statement. These clothes were thrown by them in one agriculture field. The statement of the owner of

the said agricultural field shows that he has set the agricultural field on fire to uproot the earlier particles of the cultivation, therefore, the clothes were also burned in the incident. He submitted that thus, the clothes which were on the person of the assailants, were not at all recovered.

9. The another circumstance on which the prosecution relied upon is the statement of one Raheman who has allegedly identified the present applicant during the identification parade. He submitted that the identification parade is held after one and half months of the said incident and there is no material to show that precautions are taken by the investigating agency while producing the present applicant before the Court or while taking him out of the lock-up for the purpose of discovery of the facts of the articles. Thus, this evidence as to the identification parade is also not helpful to the prosecution to show the involvement of the present applicant in the alleged offence. Thus, he submitted that in absence of any direct evidence against the present applicant to connect him with the alleged offence merely because there was a previous dispute or enmity is not sufficient. The enmity is a double edged weapon. Now, the investigation is already completed, charge-sheet is filed and further incarceration of the present applicant is not required. In view of that the application deserves to be allowed.

10. Learned APP strongly opposed the said application on the ground that there was a motive for the present applicant to commit the murder of the deceased. He submitted that during the investigation the Investigating Officer has recorded the statement of the wife of the deceased as well as the other witnesses, who have described the description of the clothes of the assailants as well as the description of the persons. The assailants are identified by the witnesses during the identification parade. The incriminating weapons are also recovered at the instance of the co-accused. Thus, sufficient material is there to connect the present applicant with the alleged offence. Considering the gravity of the offence and manner in which the deceased was eliminated by the present applicant, the bail application deserves to be rejected.

11. After hearing the both sides and on perusal of the investigation papers it reveals that there was a previous enmity between the family of the deceased and the present applicant. Admittedly, there is no direct evidence available to show the involvement of the present applicant in the alleged offence. The entire case is rested on the circumstantial evidence. Initially, the First Information Report was registered against the unknown person and during the investigation the suspicion was raised against the present applicant and the other co-accused due to the previous enmity between them.

12. During the investigation, the Investigating Officer has recorded the relevant statements of the witnesses including the statement of one Anupriya @ Bebitai Dilip Sonune who has stated before the Investigating Officer that some unknown persons have eliminated her husband by assaulting him and by setting him on fire. But, she has suspected regarding the involvement of the present applicant and other co-accused. Thus, the investigation paper shows that till recording her statement on 10.10.2023, only suspicion was there regarding the involvement of the present applicant in the alleged offence. Prior to the any material available with the investigating agency, the applicant appears to have been arrested by the investigating agency. The Investigating Officer has also recorded the statement of one Anushka Pramod Ladkar who stated that on the day of the incident, when she was returning from the school, he has seen two persons near the Bordi village near one stream and said persons were wearing helmets and average build. One of the assailants was wearing a black colour jacket and blue colour pant and another person was wearing the faint colour shirt and blue colour pant. The same description is disclosed by Nikhil Daulat Gudade also, who added that said persons have assaulted the deceased by means of iron pipe. One more witness Raheman Shah Ahmad Shah has also described the similar description of the clothes of the deceased. The statement of these witnesses shows that the assailants were covering their faces by the military

colour masks. Admittedly, the said Nikhil was not called for the identification parade.

13. The said identification parade was held on 08.12.2023 whereas the incident was occurred on 09.10.2023. Thus, the identification parade was held after one and half months. Though the investigating agency relied upon the identification Parade, but there is no material placed on record by the investigating agency to show that from the date of arrest till the holding of the identification parade, the precaution was taken by them while producing the present applicant before the learned Magistrate as well as while taking out from lock-up for the purpose of the discovery or recovery of the weapons by covering their faces. Admittedly, the iron pipes are recovered at the instance of the co-accused on the basis of his statement. No blood stains appear to be found on the said weapons.

14. Thus, considering the material which is collected during the investigation, admittedly, this is not a stage wherein the quality of the evidence is to be assessed or discussed, but considering whether there is a *prima facie* case or not and whether the evidence collected during the investigation is sufficient for the incarceration of the present applicant. It is well settled that the applicant cannot be kept behind bar by way of punishment. But at this stage, the Court has to consider the gravity of the offence, the evidence available against the accused,

and whether the accused would be available for trial if he is released on bail. Now, the investigation is already completed, charge-sheet is filed. As far as the nature of evidence is concerned, the involvement of the applicant appears to be there on the basis of suspicion raised by the witnesses, due to the previous enmity between the parties. Considering the nature of the investigation collected by the investigating agency and considering the fact that now the charge-sheet is filed, further incarceration of the present applicant is not required. Moreover, the co-accused at whose instance the weapons are recovered is already released on bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Dnyaneshwar Ramdas Sonune** shall be released on bail in connection with Crime No.301/2023, registered with Police Station, Jaulka, District Washim for the offences punishable under Sections 302, 201 and 120-B of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned Police Station once in a month on 1st of every month, till the conclusion of the trial.
- (iv) The applicant shall not enter into the vicinity of village Balkhed, Taluka Risod, District Washim, till the culmination of the trial.

(v) The applicant shall inform his residential address where he is intending to reside till the culmination of the trial and also furnish his cell phone number with address proof.

(vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either physically or through electronic media.

(vii) The contravention of any of the conditions would lead to the cancellation of the bail.

(viii) The trial Court shall not be influenced by the observations made which is *prima facie* in nature.

15. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)