



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

CRIMINAL APPLICATION (BA) NO. 1071 OF 2024

Baburao Patilba Mundhe

Vs.

The State of Maharashtra, through Police Station Officer, Police Station,
Deulgaon Raja, District Buldhana

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

Court's or Judge's orders

Mr. R. N. Ghuge, Counsel for the applicant.
Mr. S. V. Narale, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/12/2024

1. The applicant came to be arrested on 09.06.2024 in connection with Crime No.228/2024 registered with Police Station Deulgaon Raja, District Buldhana for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

2. Initially, the crime was registered on the basis of report lodged by the brother of the deceased stated that the deceased was addicted to the bad vices like drinking liquor and under the influence of liquor he used to beat all the family members. The informant who is brother was residing separately along with his wife and children. The deceased was also residing separately along with his wife and children and present applicant who is the father of the deceased was also residing separately with his

wife. It is alleged that on 04.06.2024 at about 9.00 a.m. the Sarpanch of the village visited the house of the informant and inquired with the deceased and he informed that the deceased has committed suicide by hanging himself. On the basis of the said report, initially, the AD report was registered. During the investigation, it revealed that the present applicant is the father of the deceased has committed his murder by strangulating his neck and therefore, the crime is registered against him.

3. Heard learned Counsel for the applicant who submitted that the statements of all the witnesses show that the deceased was addicted to bad vices like drinking liquor. Due to the ill-treatment at the hands of the deceased, his wife started residing with her parents and on 03.06.2024 she was at the house of the deceased, but as usual the deceased entered in the house under the influence of liquor and therefore, to save herself she took the shelter at the house of the present applicant and her mother-in-law. The deceased followed her and started quarreling with his parents why she was taken inside the house by them. On that count, the deceased has assaulted the present applicant and as well as the mother and also threatened them. But as this is the usual thing, they have not made complaint against anybody. The statement of the wife of the deceased further states that due to the fear of the deceased, she took shelter at the house of the cousin

brother of the deceased on that night. On 04.06.2024 at about 7.30 a.m., again the deceased came under the influence of liquor and started quarreling again as well as assaulted them and therefore, the present applicant and the deceased went inside the room and the deceased attempted to attack on the present applicant therefore, he thrown the chilli power on his eyes and strangled him, due to which the death of the deceased is caused.

4. Learned Counsel for the applicant submitted that the entire statements of the witnesses disclose the same series of the incident. Thus, considering the nature of the incident admittedly it shows that there was grave and sudden provocation at the instance of the deceased and therefore, as there was no other alternate before the present applicant, he thrown chilli power and thereafter, the subsequent incident took place. He submitted that even accepting the case of the prosecution as it is, it will not cover under the definition of murder, but at the most, it would be the culpable homicide not amounting to murder as the case of the present applicant covers under the exception of the grave and sudden provocation. He submitted that the applicant is 76 years old man, if he is detained in jail, his health will deteriorate. Admittedly, there was no intention to cause the death of the deceased, admittedly, there was knowledge, but considering the fact that, now the investigation is already completed

and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

5. Learned APP strongly opposed the said application and submitted that after throwing the chilli power in the eyes of the deceased, his murder was committed. The postmortem report shows that the death of the deceased is caused due to the strangulation. All the witnesses are family members, if the present applicant is released on bail, there is every possibility of tampering of the witnesses, in view of that, the application deserves to be rejected.

6. After hearing both the sides and on perusal of the investigation papers, it reveals that the present applicant is the father of the deceased. The death of the deceased is also caused due to the strangulation. The postmortem report reflects there was C2 cervical fracture, comminuted multiple and Bilateral fractures. It further reveals that Hyoid and C2 spine fracture with evidence of chilli flakes inside the eyes of the deceased and complete ligature mark and probable cause of death is asphyxia due to strangulation. The statement of the witnesses also also discloses that the deceased was addicted to the bad vices like drinking liquor and he has sold out the property which came to his share to fulfill his desires. On the day of the incident and prior to that also he came home under the influence of liquor and not only

abused the present applicant, who is his father but mother also and wife also. On 04.06.2024, also the same incident was repeated and he attempted to cause the injuries to the present applicant by sickle and therefore, the present applicant has thrown the chilli power in his eyes and thereafter, strangulated him by means of a rope. The extra-judicial confession which admittedly is a very weak type of evidence discloses the circumstances under which the alleged incident has taken place. Learned Counsel for the applicant vehemently stated that the act of the present applicant covers under the exception grave and sudden provocation. When the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder the problem is to be approached in three stages. The question to be considered at first stage is whether the accused has done an act by doing which he has caused the death of another person. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer of the question is *prima facie* found in the affirmative, the stage is reached for considering the operation of Section 300 of IPC. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder contained in Section 300.

If the answer to this question is the negative the offence would be culpable homicide not amounting to murder, punishable under the first or the second part of Section 304, depending respectively, on whether the second or the third part of Section 299 is applicable. If the question is found to be positive, but comes within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder punishable with the first part of Section 304, IPC. But sometimes the facts also intertwined and the second and the third stages are so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and the third stages.

7. In the light of the above well-settled legal principles, if the facts of the present case are considered, admittedly, the present applicant is the father of the deceased, there was no previous dispute between them. The entire incident started on account of the addiction of the deceased and the provocation by the deceased to the present applicant. The act committed by the present applicant is to save himself and to save the wife of the deceased. Thus, at this stage, admittedly it is apparent that there was no intention to commit the murder of the deceased who is the son of the present applicant. But there was admittedly the knowledge to the present applicant that such acts would cause the death of the deceased. In such circumstances, at the most, the

case would cover under the culpable homicide not amounting to murder. Of course, that aspect is to be considered at the stage of trial. But at this stage, considering the circumstances under which the alleged incident has taken place and the intention of the applicant is not there is apparent from the circumstances, in view of that, 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 **Baburao Patilba Mundhe** shall be released on bail in connection with Crime No.228/2024 registered with Police Station Deulgaon Raja, District Buldhana for the offence punishable under Section 302 and 201 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 not enter into the village Dagadwadi Taluka Deulgaon Raja, District Buldana, till the culmination of the trial.
- (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- (v) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(vi) The trial Court shall not be influenced by the observations made by this Court which are only for the purpose of bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)