



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

CRIMINAL APPLICATION (BA) NO. 1136 OF 2024

Ashwin s/o Madhukar Wasnik

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Jaripatka, District Nagpur

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

Court's or Judge's orders

Mr. Anil Mardikar Senior Counsel a/b Mr. Digvijay Prakash Singh, Counsel
for the applicant.

Mr. K. R. Lule, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 05/12/2024

1. The applicant came to be arrested on 27.05.2024 in connection with Crime No.376/2024 registered with Police Station, Jaripatka, District Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the wife of the deceased on an allegation that on 26.05.2024 her husband has received a phone call from the son of the present applicant who was abusing him, at the relevant time, the deceased has requested him that he wants to communicate with his father. Thereafter, the deceased has left the house to visit the house of the present applicant. On 27.05.2024 at about 5.30 a.m. she came to know from the police that due to the

assault at the house of the present applicant and the other co-accused, he sustained the injuries and succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant and other co-accused.

3. Heard learned Senior Counsel for the applicant, who submitted that the entire statements of the witnesses recorded during the investigation from which, it reveals that there was an extra-judicial confession by the co-accused, who has assaulted the deceased by means of iron rod. As far as the present applicant is concerned, except his presence, there is no other material to show that he was involved in actual assault on the deceased. He invited my attention towards various statements of witnesses and submitted that though there were several injuries on the person of the deceased, but the recitals of the FIR and the statements of the various witnesses disclose that it was the co-accused with whom there was a quarrel and out of that quarrel, the deceased was assaulted by the co-accused Avishkar and not the present applicant. Even the extra-judicial confession if taken into consideration, in the light of the fact that the spot of the incident was the house of the present applicant and the deceased has visited the house of the present applicant wherein he was assaulted by the son of the present applicant. Thus, considering all these aspects, the applicant be released on bail. He further submitted that the deceased was represented

in a civil suit by the present applicant and there was a dispute on account of legal fess and therefore, altercation of words took place between them and out of that the deceased was allegedly assaulted by the son of the present applicant and not by the present applicant. The applicant is chronic diabetic patient, if he is kept behind the bars, his health will deteriorate. Considering all these aspects, and considering the fact that no overt act is attributed to him, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that the deceased has sustained as many as 25 injuries on his person. Besides the extra-judicial confession, the statements of the witnesses shows that the applicant was also present at the spot of incident. The blood stained Banian of the present applicant was seized after the incident. Thus, considering the entire investigation material prima facie case is made out against the present applicant, in view of that, the application deserves to be rejected.

5. After hearing both sides and on perusal of the recital of the FIR and the investigation papers, there is no dispute that spot of incident is the 2nd floor of the house of the present applicant. I have perused the various statements including the statement of one Raunak Sakhare which shows that the present applicant is the maternal uncle and as he received the phone call of the daughter of the

present applicant, he visited the house of the present applicant. The present applicant and the another co-accused were in a scared condition and the co-accused made extra-judicial confession that there was a quarrel between him and the deceased and in that quarrel, he has assaulted the deceased by means of fist and kick blows and also assaulted him by iron rod due to which, he was unconscious. Thus, said extra-judicial confession nowhere states that the present applicant was also involved in the assault to the deceased. The other statements are also on the similar line. The statement of Ajankya Sakhare also recorded under Section 164 of Cr.P.C., wherein he has stated that when he visited the house of the present applicant, the present applicant was sleeping and it was the co-accused Avishkar, who has disclosed to him that deceased was in an unconscious condition. One general diary entry bearing No.9 is also placed on record, which is contrary to the entire investigation which shows that the police have received the information at about 4.15 that one person is lying in unconscious condition at Indora Matha near Ambade Aata Chikki and he is in dead condition. After receipt of the said information, the police staff was proceeded towards the spot of incident and another general diary entry No.10 shows that when they visited Indora Matha Mohalla near Bouddha Vihar one person by name Harish Divakar Karade was found in an injured condition and therefore, they have deputed some police officials and also called two panchas for

drawing spot panchanama. If these two entries are taken into consideration, those entries are completely contradictory to the prosecution story. If the injured was found in an injured condition at Indora Matha Mohalla near Bouddha Vihar, then the story narrated by the prosecution as to the occurrence of the alleged incident in the house of the present applicant appears to be suspicious. At this stage, considering the role attributed to the present applicant is to the extent of presence, there is no overt act is attributed to him and he is a patient of chronic diabetic. All these facts if taken into consideration, 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 **Ashwin s/o Madhukar Wasnik** shall be released on bail in connection with Crime No.376/2024 registered with Police Station, Jaripatka, District Nagpur for the offence punishable under Section 302 read with Section 34 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 proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(6)

37.ba.1136.2024.b

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicant shall not enter into the vicinity of HUDCO colony, till the culmination of the trial.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)