



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

CRIMINAL APPLICATION (BA) NO.1122 OF 2024
(Abdul Khalik Abdul Mannan 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. A.S. Mardikar, Sr. Advocate a/b Mr. Salman Ali, Advocate for the
applicant.
Mr. N.B. Jawade, APP for the State.
Mr. M.V. Bute, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 19, 2024.

Heard.

2. By this application, the applicant is seeking bail as they came to be arrested on 28/10/2023 in connection with Crime No.353/2023 registered with Police Station Murtizapur, District Akola for the offences punishable under Sections 302 and 201 of the Indian Penal Code and Sections 4/25 of the Arms Act, 1959.

3. The crime is registered on the basis of report lodged by the brother of the deceased namely Subhash Mahadeorao Deshmukh on an allegation that deceased was his brother who was in prison and was released from prison on 15/08/2023 and since then he was residing at Kokanwadi, Murtizapur separately. On 27/10/2023 when he was present at his house, he received the message from the people who are residing in his lane that his brother

has sustained the injuries due to the assault by the present applicant on his chest by means of knife. He immediately rushed to the spot of incident and took the injured in the hospital but injured was succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant.

4. Learned Senior Counsel for the applicant submitted that as far as the involvement of the present applicant in the alleged incident is concerned, it is the case of the prosecution that some incident has taken place in the afternoon and due to which the deceased was eliminated by the present applicant. The recitals of the FIR are silent as to the incident which took place during the afternoon. He submitted that the statements of the witnesses namely Chetan and Akshay shows that they have witnessed the incident and they informed the informant about the incident but the informant nowhere stated that he was informed by his son about the alleged incident. Moreover, the statements of this Chetan and Akshay who are the nephews of the deceased are recorded on 03/01/2024 i.e. after seven days of the incident. He further invited my attention towards one letter issued by the Investigating Officer to the eye-witness and the informant to remain present for the purpose of inquest panchnama. Said inquest panchnama was drawn on 28/10/2023 at the relevant time, these witnesses have not disclosed the said incident to the Investigating Officer as to they have witnessed the said incident. He further stated

that on the basis of the memorandum statement of the present applicant, the alleged incriminating article i.e. knife came to be recovered. The said recovery is also not helpful to the prosecution as the place of the recovery is not mentioned in the memorandum statement. He submitted that considering the entire investigation is carried out by the investigating agency, the involvement of the present applicant appears to be doubtful. In support of his contention he placed reliance on ***Manoj Madanlal Tekam Vs. State of Maharashtra [2014 SCC OnLine Bom 1236]*** wherein this Court has considered the aspect of the statement under Section 27 and held that if in the memorandum statement the place of recovery is absent the consequent recovery from the place from where the recovery is made is of no use. The another judgment of this Court in ***Criminal Appeal No.12/2022 (Adina wd/o Subhash Rathod and anr. Vs. The State of Maharashtra)*** decided on 29/07/2024 in paragraph No.23 the similar observation is made by the Division Bench of this Court and it is observed as under .:

“It can be seen that Section 27 of the Evidence Act, requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this information given must relate distinctly to the said fact of recovery of incriminating articles, in absence of a disclosure made by the accused is of no consequence.”

5. On the basis of this submission he submitted that the material collected by the investigating agency against the present applicant is insufficient to show his involvement in the alleged incident. In view of that and considering the fact that now investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, he be released on bail.

6. Learned APP strongly opposed the application and submitted that the blood stained cloths of the present applicant are recovered immediately after his arrest. The statements of Chetan and Akshay discloses the involvement of the present applicant in the alleged incident. The blood stains are found on the cloths. The knife is also recovered at the instance of the present applicant. There are in all 10 stab injuries on the person of the deceased. Thus, considering all these circumstances and the direct evidence collected during the investigation, the application deserves to be rejected.

7. Learned Counsel for the complainant also supported the said contention and submitted that there are criminal antecedents against the present applicant, if he is released on bail he would tamper the prosecution evidence. In view of that, the application deserves to be rejected.

8. I have heard learned Counsel for both the sides. Perused the investigation papers from which it reveals that as per the recitals of the FIR the persons who are residing in the same lane has informed about the incident to the informant whereas the statements of Chetan and Akshay shows that Chetan has informed the informant about the said incident after he witnessed the said incident. The statement of the Chetan and Akshay are recorded after eight days of the incident though they were present at the time of the inquest panchnama. Admittedly, the memorandum statement was recorded and on the basis of the memorandum statement of the present applicant the alleged incriminating article i.e. knife is recovered. On perusal of the memorandum statement it reveals that in the said statement, the applicant has not stated any place wherein the said article was concealed. Thus, place of concealment was not disclosed by the present applicant and to the investigating agency. In view of the decision of this Court in the case of Manoj Madanlal Tekam Vs. State of Maharashtra (supra) and Adina wd/o Subhash Rathod and anr. Vs. The State of Maharashtra (supra) when the place of concealment is not stated then the such recovery is of no use. The another circumstance on which the prosecution relied upon is the recovery of the blood stains from the person of the accused. The applicant was arrested immediately after the incident and arrest panchnama was drawn. The arrest panchnama is silent regarding the description of the cloths which were

on his person at the time of the arrest and subsequently the said cloths are recovered. It is not specifically mentioned that the said cloths are stained with blood but it is mentioned that there were red color stains on the cloths of the present applicant. Thus, considering the entire investigation material, the submission made by the learned Senior Counsel that the case of the prosecution appears to be doubtful has some substance but admittedly, whether he was involved or not and whether the statement of the witnesses which are recorded at belated stage are suffering from any infirmities is a matter of evidence. At this stage, considering the nature of the evidence collected by the Investigating Officer and considering the fact that, now investigation is completed and charge-sheet is filed, the applicant has made out a case for grant of bail. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Abdul Khalik Abdul Mannan in connection with Crime No.353/2023 registered with Police Station Murtizapur, District Akola for the offences punishable under Sections 302 and 201 of the Indian Penal Code and Sections 4/25 of the Arms Act, 1959, be released on bail, 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 vicinity of Kokanwadi, Murtizapur, District Akola till culmination of the trial.

(iv) The applicant shall attend the proceedings 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 either personally or by way of electronic media.

(vi) The applicant shall not leave the jurisdiction of Akola district without prior permission of the Court.

9. The contravention of any of the condition would lead to the cancellation of bail.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)