



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

CRIMINAL APPLICATION (BA) NO.1100 OF 2023
(Shubham @ Sam Dinesh Wasnik 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. PV. Navlani, Advocate for the applicant.
Ms Udeshi, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 05, 2024

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.56/2023 registered at police station City Kotwali, Amravati for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. The applicant is arrested on 04/02/2023, since then he is behind bar. The crime is registered on the basis of report lodged by Samadhan Raghunathrao Malve on an allegation that on 03/02/2023 at about 9:30 p.m. he was chitchatting at railway station square in front of one scrap shop along with his friend namely Jayant Bandiwan, Chetan Thakur, Akash Harle and the present applicant. At the relevant time, he has called the deceased Roshan Ashokrao Hiwase and called him at Shital lodge. However, deceased told him that he will come wherever they are at present. Accordingly, he came in front of the

scrap shop by his car. After getting down from the car, he initially went near Chetan Thakur who is the another co-accused to meet him. At that time, Chetan Thakur and the present applicant were chitchatting with each other. A deceased has given a call to Chetan Thakur by saying 'Thakur', and therefore, present applicant got annoyed and gave a blow of the said knife on the abdomen of the deceased, due to which deceased has sustained injuries and during treatment he succumbed to the death.

4. Learned Counsel for the applicant submitted that the genesis of the incident is suppressed by the prosecution and invited my attention towards the statement of Sagar Diliprao Ukey and pointed out that it was the deceased due to whom the alleged incident has taken place as deceased was doing the mimicry of Chetan Thakur. The statement further shows that when deceased get down from the car, co-accused Thakur and present applicant were chitchatting and deceased lifted Chetan Thakur thereafter again put him back. At the relevant time, there was a scuffle between the present applicant and present applicant has given a blow of the knife on the abdomen of the deceased, due to which deceased sustained the injuries.

5. Learned Counsel for the applicant submitted that the alleged incident has taken place as the deceased has started the mimicry of the present applicant, due to which present applicant got annoyed. The statements

further show that there was an apprehension to the present applicant that the deceased would hit him. Present applicant has also sustained the injuries. His injury certificate is collected during the investigation which shows that present applicant has sustained lacerated wound over right iliac region with 5 x 3 x ½ cm. This fact is not explained by the Investigating agency during the investigation. The statements of the witnesses shows that it was the deceased who has initiating the quarrel and in sudden fight due to the provocation at the hands of the deceased the alleged incident has taken place. There is no instantaneous death of the deceased. In a sudden fight and sudden quarrel the injuries are caused to the deceased. Now, investigation is completed and charge-sheet is filed. In view of that, applicant be released on bail.

6. Learned Additional Public Prosecutor strongly opposed the application on the ground that there is a *prima facie* material against the present applicant to show his involvement in the alleged offence. As far as the difference of the grave and sudden provocation or the sudden fight and sudden quarrel is concerned it is a matter of evidence. At the stage, it reveals from the statement that it was the present applicant who has given repeated blows on the abdominal portion of the deceased which caused the grievous injuries and deceased succumbed to the death. Considering the gravity of the

offence, the application of the present applicant deserves to be rejected.

7. After hearing both the sides and after perusal of the investigation papers admittedly, in the First Information Report there is no recitals that in the alleged incident the present applicant has also sustained the injuries. The incident narrated by the informant is that when they were chitchatting in front of the scrap shop, at the relevant time the present applicant was also present and informant has called the deceased. The deceased has given a call to the co-accused Chetan Thakur as 'Thakur', and therefore, Chetan Thakur got annoyed and the present applicant removed the knife and gave a blow on the person of the deceased whereas the statement of the other witnesses namely Sagar Ukey shows that when deceased has came there he has teased said Chetan Thakur and Chetan Thakur got annoyed thereafter deceased has lifted the Thakur and again put him back on the ground. At the relevant time, deceased was having knife in his hand. Said knife was snatched by the present applicant and as present applicant was having apprehension and also shouted expressing his apprehension that he would be hit by the deceased, took the knife and gave a blow on the person of the deceased. Thus, there is no dispute that the alleged incident has taken place when the deceased as well as present applicant and other co-accused and the witnesses were chitchatting. It took place during the sudden fight and

sudden quarrel as the deceased has teased the co-accused Chetan Thakur. Thus, there is no pre-mediation prior to the incident. While considering the bail application, it is well settled that the factors to be borne in mind are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by a grant of bail.

If these factors are taken into consideration admittedly, there was no pre-mediation on the part of the present applicant.

8. The genesis which is narrated by the informant also shows that the present applicant was present at the spot and deceased came there. The entire incident started as the deceased has teased the co-accused. Though informant has stated that the present

applicant was holding the knife along with him. However, the statements of the witnesses shows that it was the deceased who has taken out the knife which was snatched by the present applicant and thereafter given a blow. Admittedly, the intention of the person is to be gathered from the attending circumstances. Here in the present case, from the statements of the witnesses it reveals that in the sudden fight and sudden quarrel, the present applicant has snatched the knife and caused the injuries to the deceased. There was no pre-mediation and there was no previous enmity between both of them. Now, the investigation is completed. There is no criminal antecedent came on record. Only apprehension that if the applicant/accused is released on bail he will tamper the prosecution evidence which can be taken care of by imposing certain conditions on the present applicant.

9. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Shubham @ Sam Dinesh Wasnik in connection with Crime No.56/2023 registered at police station City Kotwali, Amravati for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on furnishing P.R. Bond in the sum of

Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Rathi Nagar, Amravati till the culmination of the trial.

(iv) The applicant shall attend the concerned police station once in a month i.e. first day of every month and shall cooperate with the investigating agency.

(v) The applicant shall also attend each and every date at the trial Court without seeking any exemption except in exceptional circumstances.

(vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)