



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

CRIMINAL APPLICATION (BA) NO.1094 OF 2023
(Shivam @ Shubham s/o Vijay Kamble 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. R.M. Daga, Advocate for the applicant.
Ms M.A. Barabde, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 17, 2024.

The applicant came to be arrested on 11/10/2022 in connection with Crime No.497/2022 registered with Police Station Khamgaon City, District Buldhana for the offence punishable under Sections 307, 302, 452, 143, 147, 148, 324, 323, 504 and 506 read with Section 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. As per the accusation, on 11/10/2022 one Ambadas Pawar has lodged report alleging that at about 11.30 p.m. he heard the noise from the house of his sister Ganga Lokhande who was residing nearby, therefore, he along with his sister went at the house of Ganga and noticed that co-accused Shubham Kamble and Vijay Kamble along with 5 to 6 persons came at the spot with sticks and has assaulted his nephew namely deceased Ganesh Raju Lokhande on his head due to which deceased has sustained the head injury and was immediately admitted to the hospital. After treatment of 2 months, the

deceased succumbed to the death, therefore, the offence is converted under Section 302 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that in a scuffle of two parties the alleged incident has occurred. Two co-accused have also sustained the injuries in the said incident. The death of the deceased is occurred after 2 months. It is the case of single injury. There was no intention to commit murder, at the most knowledge can be attributed to the present applicant, and therefore, the case covers under Section 304 Part II of the Indian Penal Code for which punishment provided is not more than 10 years. He further submitted that there was no instantaneous death of the deceased. The first MLC report shows that the Medical Officer has only seen the injury in the nature of contusion. Now the investigation is completed and charge-sheet is filed. Further incarceration of the present applicant is not required and no purpose will be served by keeping him behind bar.

4. On the other hand, learned Additional Public Prosecutor strongly opposed the application on the ground that with an intention to commit the murder of the deceased, the applicant and other co-accused came at the spot armed with weapons and assaulted the deceased which resulted to the elimination of the deceased. Considering the *prima facie* material against the present applicant, the application deserves to be rejected.

5. Having heard learned Counsel for the parties. Perused the investigation papers. The FIR is lodged by the Ambadas Shrirang Pawar. As per the allegation in the FIR, on 10th October, 2022, present application along with 5-6 persons came at the spot holding the sticks in their hand and they have assaulted the deceased by means of the said sticks. There is no dispute as to the fact that some of the co-accused have also received the injuries in the said incident. There are counter complaints filed against each other. The first MLC report shows the injury in the nature of contusion thereafter the injured was taken to the hospital at Akola wherein on examination it revealed that large 10 mm thick subdural haematoma over right frontotemporo parietal region was seen by the Medical Officer which is an injury grievous in nature. The deceased was under treatment for 2 months and on 10th December, 2022 the death of the deceased is occurred. The postmortem report also shows one head injury, internal injury mentioned in the postmortem report i.e. part of right fronto parieto temporal skull bone absent of size 27 cm x 18 cm, margins regular, clean cut and blood infiltration present. For these injuries the deceased was treated in the hospital for 2 months but he succumbed to the death. Thus, the contention of the learned Counsel for the applicant that only one injury is sustained by the deceased though he was assaulted by 5 to 6 persons and therefore there is a contradiction in the medical evidence and the oral evidence. Admittedly, at this stage, evaluation

of the evidence is not expected, only Court has to see whether there is a *prime facie* material against the present applicant or not. It reveals from the investigation papers that deceased as well as two co-accused have received the injuries in the alleged incident. Thus, injuries are sustained by the deceased and the two persons in a scuffle took place between the two parties.

6. Considering now the investigation is completed and charge-sheet is filed and the submission made by the learned Counsel that at the most the case covers under Section 304 Part II of course whether there was an intention or only knowledge to commit the offence is a part of evidence. At this stage, considering the investigation is completed and there is no criminal antecedent against the present applicant and the alleged incident has occurred in a scuffle took place between the two parties, 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 - Shivam @ Shubham s/o Vijay Kamble in connection with Crime No.497/2022 registered with Police Station Khamgaon City, District Buldhana for the offence punishable under Sections 307, 302, 452, 143, 147, 148, 324, 323, 504 and 506 read with Section 149 of the Indian Penal

Code and Section 135 of the Maharashtra Police Act, be released on bail on furnishing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter in the Chandmari, Khamgaon, till the culmination of trial where the witnesses are residing.

(iv) The applicant shall attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(vi) The applicant shall furnish his Cell phone number and address with the address proof.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)