



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

CRIMINAL APPLICATION (BA) NO.1145 OF 2023

(Ankit @ Any s/o Nilesh Waghmare Vs. The 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

Corrected as per
Court's order dated
07/05/2024

Mr. C.R. Thakur, Advocate for the applicant.
Mr. H.R. Dhumale, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 23, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 28/06/2023 in connection with Crime No.435/2023 registered with Police Station Ajni, Nagpur, District Nagpur for the offence punishable under Sections 302, 307, 120-B read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951.

2. The accusation against the present applicant is on the basis of report lodged by Sushant Uttam Bawangade alleging that the deceased Nikhil @ Dahilya Shahu Ukey was his friend. On 28/06/2023 deceased received a phone call of Himanshu Moon and called him near his house. However, he restrained the deceased from visiting the said place and they were proceeding to drop the deceased at his house. On the way again deceased has received the phone call of co-accused Himanshu, and

therefore, the deceased asked them to come along with him at the house of Himanshu. At about 12:30 a.m. they all proceeded towards the house of Himanshu Moon at Rama Nagar, Lane No.2. When they reached on the turning of Lane No.2 present applicant and another co-accused Vishal @ Babbu Kalya were sitting in front of the grocery shop and from them the co-accused Himanshu Moon was standing at some distance. Thereafter the informant and deceased went near the co-accused Himanshu. Himanshu asked the informant to stay away as he wants to communicate with the deceased privately. Thereafter he came along with the present applicant and another co-accused Vishal. After sometime, the informant has received the phone call of the co-accused Himanshu who asked them to leave the place and also asked them to take the present applicant along with them, therefore, they were proceeded from the spot on the motorcycle. When they halted near Ramteke Nagar present applicant left the place in search of liquor and not returned back. Subsequently, informant has received the phone call of one of his friend namely Akshay Chandankhede who disclosed that Nikhil Ukey is lying in front of the house of co-accused Himanshu Moon. He immediately went at the spot of incident and saw the deceased in an injured condition, lying in the pool of blood. Deceased was immediately shifted to the hospital however, he reported to be dead. The deceased has sustained injuries on his person that is chest, abdomen and on hands. On the basis

of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as present applicant is concerned, his presence prior to the incident at the spot of incident is noted but it is the prosecution case that on the say of the co-accused, informant and another co-accused took the present applicant at Ramteke Nagar and at Ramteke Nagar applicant has left the place on the pretext of bringing the liquor and not returned back. As far as presence of the present applicant at the spot of incident where the alleged incident has taken place, there is no direct evidence available. The Investigating Officer has recorded the statements of relevant witnesses and statement of one Sohan Shyam Nijme was recorded under Section 164 as well as under Section 161 of the Code of Criminal Procedure. In both the statements, he nowhere stated that there were blood stains on the cloths of the present applicant. The Investigating Officer has seized the clothes of the present applicant and in a seizure panchnama it is mentioned that there were stains similar to the blood stains on the cloths of the present applicant. The another circumstance on which the prosecution relied upon is the extra judicial confession by the co-accused to said Sohan Shyam Nijme which is to the extent that they all has killed the deceased. He submitted that except the said extra judicial confession by co-accused there is absolutely no material to show the involvement of the present applicant

in the execution of the act or assault on the deceased. In view of that, the involvement of the present applicant is merely on suspicion. He submitted that the CDR report shows the communication between the present applicant and the co-accused but considering the present applicant and co-accused are friends the telephonic communication between them cannot be an unnatural event which would help the prosecution. He further submitted that there is no material to show that present applicant is involved in a criminal conspiracy which was hatched to eliminate the deceased. There was no previous enmity between the present applicant and the deceased whereas there was an enmity between the co-accused and the deceased as deceased was having love relationship with the sister of the co-accused Himanshu Moon. He submitted that considering the entire material which is collected during the investigation, there is no direct evidence to connect the present applicant with the alleged offence. In view of that, the applicant be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that considering the gravity of the offence that deceased was called by the co-accused near his house and eliminated him with the help of the present applicant. He submitted that the statement of the informant that present applicant has left the place from Ramteke Nagar on the pretext of bringing the liquor and not returned back sufficiently shows his involvement in the alleged offence. The CDR report shows

the communication between them. In view of that, the application deserves to be rejected. Learned APP further relied upon the circumstance that seizure of the clothes at the instance of the present applicant wherein blood stains were found.

5. I have heard learned Counsel for both the parties. Perused the investigation papers. The entire incident occurred as there was a previous dispute between the deceased and the co-accused Himanshu Moon as deceased was having love relationship with the sister of the said Himanshu Moon which was disliked by him. On the date of incident, as per the prosecution case, the co-accused Himanshu Moon has by telephonic call, called the deceased near his house. At the relevant time, at some distance present applicant and another co-accused were sitting in front of the grocery shop. The informant and the deceased went near the present applicant and another co-accused and asked them why they were called and both have disclosed that Himanshu wants to communicate with the deceased Nikhil. Therefore, the informant and the deceased went near the co-accused Himanshu Moon. Himanshu asked the informant that he wants to talk with the deceased privately and also made a telephonic call to the informant to leave the place. Accordingly, present applicant and other co-accused and the informant left the place and went at Ramteke Nagar. At Ramteke Nagar present applicant has left the place on the pretext of searching the liquor and not returned back. During

investigation, the Investigating Officer has recorded the statement of one Sohan Shyam Nijme which shows that present applicant along with other two accused came at his house, at that time there were blood stains on the clothes of the co-accused Himanshu Moon and requested him to provide Himanshu Moon one shirt. Accordingly, he provided the shirt and thereafter Himanshu Moon has wrapped his blood stained clothes and kept in dicky of his vehicle. The statement of Omprakash Ramniwas Tomar and Sohan Shyam Nijme was also recorded under Section 164 of the Cr.P.C. wherein also he has stated that when Himanshu approached to him, there were blood stains on his clothes but he nowhere stated that he has witnessed the blood stains on the clothes of the present applicant and other co-accused Vishal. As far as the criminal conspiracy is concerned except the bare words of the prosecution witness/informant there is no other material to show that prior to the incident at any point of time present applicant and other co-accused met at some place and hatched the conspiracy. As far as the conspiracy part is concerned admittedly no direct evidence would be available for showing the involvement in criminal conspiracy. However, there should be some evidence on record to show that the applicant was part of the said criminal conspiracy. Thus, there is absolutely no evidence on record to show that after leaving the place from Ramteke Nagar i.e. the place where the present applicant has left the company of the informant and other

co-accused. No material is brought on record to show that he came at the spot of incident and assisted the co-accused Himanshu to execute the act. As far as the extra judicial confession is concerned which is not supported by any other circumstances on record to show that at the time of the execution of the act, present applicant was present along with the co-accused. Considering the entire material which is collected during the investigation, there is no direct or circumstantial evidence against the present applicant to show that at the spot of incident he was present when the act of elimination was executed by the co-accused. Now, the investigation is already completed and charge-sheet is filed. Considering the nature of the evidence, further incarceration of the present applicant is not required. There is no doubt as to the fact that the alleged offence committed by the co-accused is grievous in nature and he has eliminated the deceased in a brutal manner. However, the involvement of the present applicant is concerned, there is no direct or circumstantial evidence to show that he was present along with the co-accused at the time of the incident. Considering the same, 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 – Ankit @ Any s/o Nilesh Waghmare in connection with Crime

No.435/2023 registered with Police Station Ajni, Nagpur, District Nagpur for the offence punishable under Sections 302, 307, 120-B read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, be released on bail on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iii) The applicant shall not enter into the vicinity of Sheelgandh Bauddha Vihar, Bheem Nagar i.e. within the jurisdiction of Ajni police station 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 the Investigating Officer shall record his presence.

(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.

6. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)