



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

CRIMINAL APPLICATION (BA) NO.1155 OF 2023

Priti d/o Santosh Wankhade and others
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Hiwarkhed, District Buldhana

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

Court's or Judge's orders

Mr. M. V. Amale, Advocate for applicants.
Mr. Nitin Autkar, APP for respondent No.1/State.
Mrs. Sonali Saware Gadhawe, Advocate for the informant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/03/2024

1. By this application, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.133/2023 which was initially registered under Section 307 read with Section 34 of the Indian Penal Code, which was subsequently converted into Section 302 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the deceased Pradip Prakash Wankhade alleging that he is a student of 2nd Year Bachelor of Arts. On the basis of report lodged by applicant No.1, crime was registered against him under Section 354 of the Indian Penal Code. On account of said reason, there used to be quarrel between him and the family members of applicant

No.1. On 07.08.2023 when he was present at his house at about 8.30 p.m., present applicants came to his house and threatened him that they will withdraw the case, he has to pay the amount. When he declined to pay the amount, they assaulted him and administered the poison forcefully to him, immediately, he was taken to the hospital. On the basis of the said report, the crime is registered against him under Section 307 of the Indian Penal Code. During treatment, he succumbed to the death.

3. Learned Counsel for the applicants submitted that present applicants are implicated maliciously and falsely due to the previous enmity. There is a previous record that initially also in the year 2022, the deceased has consumed the poison of a similar nature and was admitted in the hospital. He invited my attention towards the previous complaint lodged by the applicant No.1 against the deceased, which shows that in the said report she alleged that present applicant has outraged her modesty with an intention and subjected her for sexual harassment. On the basis of said report, the FIR is registered against him. Thereafter, on the basis of report by mother of the applicant No.1, one NC report was also lodged against the deceased. Subsequently, another report is also registered against the deceased vide Crime No.230/2023. On the basis of FIR lodged by applicant No.1, under Sections 354 and 354-D of the Indian Penal Code. He submitted that deceased

himself has consumed the poison and lodged this false FIR only to implicate the present applicants in the alleged offence. They are not at all concerned with the alleged offence. The applicant Nos.1 and 2 are the college going students. They have to appear for their examinations. If they are put behind bar for indefinite period, their entire career would affect. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required and prays for releasing them on bail.

4. Learned APP and learned Counsel for the informant strongly opposed the application on the ground that due to the previous enmity between them, present applicants administered the poison to the deceased. The incident is witnessed by the eye witnesses which shows the involvement of the present applicants. If the present applicants are released on bail, they would tamper with the prosecution evidence and prays for rejection of the application.

5. Having heard the learned Counsel for the applicants and learned APP for the State, perused the investigation papers. There is no dispute as to the fact that there was a previous enmity between the deceased and the present applicants. Applicant No.1 has lodged two reports against the deceased. Learned APP pointed out that the second FIR which is lodged by the applicant No.1 is of the same date i.e.

07.08.2023. Thus, cross-complaints are filed against each other regarding the incident. In one FIR the deceased has alleged that the poison was administered to him. On the contrary, the FIR lodged by the applicant No.1 shows that she was subjected for sexual harassment by the deceased on the same dates. During the investigation, the Investigating Officer has recorded the statements of various witnesses, most of them are the relatives of the deceased, wherein it is alleged that present applicants have administered the poison to the deceased. During the investigation, the ASI has communicated the Medical Officer which shows that deceased was admitted to the hospital due to the consumption of the poison. Thus, these two stories are there, one is stating that the poison was administered and another story states that deceased was admitted as he has consumed the poison. The medical treatment papers admittedly are not the part of the charge-sheet. From the communication, it reveals that two stories before the Court, one story stating that poison was administered and another story stating that it was the deceased who has consumed the poison. The document which is at Annexure A also shows that previously also the deceased has consumed the poison. Admittedly, whether he has consumed the poison or poison was administered is a matter of evidence. At this stage, considering that the investigation is already completed and charge-sheet is filed, further

incarceration of the present applicants is not required. The application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **No.(1) Priti d/o Santosh Wankhade, No.(2) Pallavi d/o Santosh Wankhade and No.(3) Latabai w/o Santosh Wankhade** be released on bail in connection with Crime No.133/2023 registered with Police Station Hiwarkhed, District Buldhana for the offence punishable under Sections 302, 452 read with Section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

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

(iv) The applicants shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

(v) Fees of the Counsel for the informant appointed by the High Court Legal Services Sub-Committee, Nagpur, be paid as per rules.

(URMILA JOSHI-PHALKE, J.)