



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

CRIMINAL APPLICATION (BA) NO.11 OF 2024

Kamlesh Vinod Kalaskar

Vs.

State of Maharashtra, Through Police Station Officer Yavatmal City,
District Yavatmal

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

Court's or Judge's orders

Mr. Imran Deshmukh, Advocate for applicant.
Mrs. M. H. Deshmukh, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/02/2024

1. The applicant came to be arrested on 23.01.2023 in connection with Crime No.32/2023 registered with Police Station, Yavatmal City, District Yavatmal for the offences punishable under Sections 143, 147, 148 and 302 read with Section 149 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Sonu Mankar on an allegation that he was present on the spot along with another labour, who was serving at Government Hospital, Yavatmal for doing the fabrication work. During the night on 21.01.2023, the present applicant along with the other co-accused came at the spot and raised the quarrel with the deceased. It is further alleged that all the accused have formed the unlawful assembly, in furtherance of their common object, they have assaulted the

deceased by means of a rod, aluminum frame and by fist and blows. Due to the injury sustained by the deceased, and assault at the hands of the co-accused, he succumbed to the death. On the basis of said report, police have registered the crime.

3. Learned Counsel for the applicant submitted that as far as the present applicant is concerned, only his presence is mentioned by the informant, who is the eyewitness. No overt act is attributed to him. Even no role of instigation is attributed to the present applicant. Now, the investigation is completed and charge-sheet is filed. His further custodial interrogation is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the application on the ground that there is a *prima facie* material against the present applicant, which shows that the applicant was the member of unlawful assembly and in furtherance of their common object, they have assaulted the deceased and, therefore, the application deserves to be rejected.

5. Having heard the learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR and the investigation papers. The informant is the eyewitness of the said incident. As per the allegation in the FIR, the presence of the applicant is narrated by the informant. As far as the overt act is concerned, no overt act is attributed to

the present applicant. Even there is no allegation that in any manner the present applicant has instigated the other co-accused for assaulting the deceased. Thus, considering the role attributed to the present applicant, the applicant has made out a case to grant him bail. Except the presence, no other overt act is attributed to him. In view of that, application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Kamlesh Vinod Kalaskar** is released on bail in connection with Crime No.32/2023 registered with Police Station, Yavatmal City, District Yavatmal for the offences punishable under Sections 143, 147, 148 and 302 read with Section 149 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (iv) The applicant shall attend the Yavatmal City Police Station twice in a month on 1st and 15th of every month and the Police Station Officer shall record his presence.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)