



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

CRIMINAL APPLICATION (BA) NO. 04 OF 2024

Samir Siddique s/o Sadrul Siddique V/s 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

Mr.G.S. Gour, counsel h/f Mr. D.V.Chauhan, counsel for the applicant.
Ms. Trupti Udeshi, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/02/2024.

1. The present application is filed by the applicant for grant of bail under Section 439 of the Cr.P.C. in connection with Crime No. 710/2022 registered with Police Station Kanhan, District Nagpur for the offence punishable under Sections 302, 353, 307 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act, 1951. The applicant came to be arrested on 12/12/2022.

2. The crime is registered on the basis of report lodged by Mahesh Wamanrao Nasare on an allegation that the present applicant along with other co-accused on 11/12/2022, when the deceased was on patrolling duty in the premises of Western Coalfields Limited (WCL) along with other two Security Guards entered into the prohibited area. The deceased restrained them from entering into the prohibited area, at that time, the present applicant took out the pistol and fired two bullets towards deceased Milind Khobragade. In the

said incident, deceased Milind Khobragade sustained grievous injuries and succumbed to the death. After the said incident, the present applicant as well as co-accused ran away from the spot of the incident. On the basis of the report, police have registered the crime against the present applicant.

3. Learned counsel Mr. D.V. Chauhan for the applicant submitted that the other co-accused is already released on bail. He further submitted that there was no premeditation, at the most intention is to be gathered only to the extent of entering into the prohibited area. There was no intention to fire the bullet and eliminate the deceased. He submitted that the material collected during the investigation itself is contradictory. He invited my attention towards one communication of the investigating agency which shows that the informant has disclosed that two unknown persons have fired a bullet towards the deceased.

4. He submitted that subsequently the statements were prepared to implicate the present applicant with the alleged offence. Now the investigation is already completed and charge-sheet is filed. He also invited my attention towards the statement of Rahul Champatrao Belkhude and Ravindra Motiram Sonekar and so on and submitted that, from their statement, it is crystal clear that the statements are recorded after a long gap only to implicate the present applicant with the alleged offence. He submitted that considering the allegation as it is, the offence under Section 302 IPC is not made out. At the most, the offence would be under Section

304 IPC i.e. culpable homicide not amounting to murder. In view of that, the applicant be released on bail.

5. Learned APP strongly opposed the application and submitted that not only the statement of the informant and the other witnesses but the pistol is recovered at the instance of the present applicant. The two cartridges are recovered from the spot of the incident. The pistol as well as the seized cartridges were sent to the ballistic expert. The opinion of the ballistic expert sufficiently shows the involvement of the present applicant in the alleged offence.

6. She further submitted that even considering the submission of the learned counsel for the applicant that the applicant entered into the prohibited area and that was the only intention, and there was no intention to eliminate the deceased then the question would be why he entered in the said prohibited area along with the weapons. She submitted that considering the material evidence i.e. statements of the eye-witnesses which is corroborated by the other circumstances that seizure of the pistol at the instance of the present applicant. The ballistic report of the injuries sustained by the deceased which are on the vital part, sufficiently shows the intention of the present applicant to commit the alleged offence. In view of that, the application deserves to be rejected.

7. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR. The alleged incident has taken place on 11/12/2022 whereas the

FIR is lodged on 12/12/2022. The investigation papers show that the informant first took the injured in the hospital. Admittedly, the treatment of the injured was of prime importance and therefore, it was necessary to provide him the medical treatment instead of lodging the report. The spot Panchanama was drawn by the investigating agency wherein the two cartridges were found and seized by the investigating agency. At the instance of the present applicant i.e. on the basis of memorandum statement recorded under Section 27 of the Indian Evidence Act, 1872 the pistol was seized and the cartridges as well as the pistol were sent to the ballistic expert for opinion. The ballistic expert opinion is as under:

The opinion of the ballistic expert shows i.e. Exhibit (1) which is one countrymade pistol is in working condition. It is capable of chambering and firing 7.65 MM pistol cartridges. Residue of fired ammunition nitrite was detected in the barrel washings of Exhibit (1), showing that pistol was used for firing prior to its receipt in the laboratory.

One 7.65 MM pistol cartridge from Exhibit (4) was successfully test fired through the countrymade pistol in Exhibit (1).

Exhibit (2) is a magazine of countrymade pistol. It can be readily sits in the butt stock cavity of countrymade pistol in Exhibit(1).

The empty in Exhibit(3) is a fired 7.65 MM pistol cartridge case without primer cap, hence not suitable for ballistic comparison.

8. During the investigation, the statements of various witnesses are also recorded by the investigating agency which also shows the involvement of the present applicant with the alleged offence. The submission of learned counsel for the

applicant even if taken into consideration, the question would arise, if there was no intention to commit any illegal act why the applicant enter into the prohibited area along with the weapons.

9. The deceased was discharging his official duty, and therefore, he was restrained by the deceased from entering into the prohibited area, on which the applicant has lost his control and fired two bullets on the deceased which hit the deceased and after treatment, the death of the deceased is caused. At this stage, there is a prima-facie material against the present applicant to connect him with the alleged offence. As far as the release of co-accused is concerned, the ground of parity is not available to the present applicant as the role of the present applicant is completely different.

10. Moreover, the prime role is attributed to the present applicant in the said incident. Considering the entire circumstances under which the alleged incident has taken place, the intention can be gathered from the circumstances that, he has carried the weapons along with him at the time of entering into the prohibited area. In these circumstances, this is not a fit case to grant bail. Accordingly, I pass the following order:-

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]