



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

CRIMINAL APPLICATION (BA) NO. 46 OF 2024

VIDIT @ MAUSI PUNJABRAO KOMATE

Vrs.

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

Shri A. Y. Humne, Advocate for applicant.
Shri V. A. Thakare, A. P. P. for respondent-sole.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 29/02/2024.

1. The applicant came to be arrested in connection with Crime No.73/2021 registered under Sections 302, 307 and 294 r/w Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report, who alleged that on the day of incident i.e. on 01/03/2021, he along with deceased proceeding from Gahu Hiwra Overbridge towards the Toll Naka by service road, at that time, present applicant and other co-accused thrown the beer bottle from the said bridge on which they have asked who has thrown the bottle, and at that time, all the accused told them that they are coming and explaining that who has thrown the bottle. Accordingly, they came near the complainant and the informant and abused them and present applicant has took out the knife and gave blows of knife on the

abdomen of the deceased and due to said repeated blows, deceased has sustained grievous injuries and shifted to the hospital and during treatment, he died on 03/03/2021.

3. Learned counsel for the applicant submitted that now, trial is commenced and all the eye-witnesses have left the loyalty towards the prosecution and not supported the prosecution case. He further submitted that applicant is behind bar since 02/03/2021 and he cannot be kept behind bar for indefinite period. There is already long incarceration of the applicant. Considering that the eye-witnesses have not supported the prosecution case and there is no material against present applicant to connect with the alleged offence. The application deserves to be allowed by releasing the present applicant on bail.

4. Learned APP strongly opposed the application on the ground that though the eye-witnesses have not supported the prosecution case, but the evidence in the nature of circumstances is on record. He submitted that during investigation, the clothes of present applicant have seized and forwarded for the DNA examination. The DNA report shows that blood stains obtained from the Full T-Shirt of the present applicant and the blood stains of the deceased are compared and found to be identical and from one and the same source of male origin. Moreover, the incriminating article - knife is seized at the instance of present applicant. The PM report shows that the deceased has sustained grievous injuries, 5 in number corresponded by the internal injuries. The death of the deceased is due

to Septicimia following stab injury in operated case. Thus, prima facie material is against the present applicant with the alleged offence. He further submitted that the CCTV footage panchnama is also collected by the Investigating Officer. Considering all the above facts and prima facie material against present applicant, application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. Admittedly, the trial is already commenced and eye-witnesses are already examined. The impugned order passed by the Sessions Judge shows that the eye-witnesses who are examined have not supported the prosecution case. Even considering the fact that eye-witnesses have not supported the prosecution case. The scientific evidence is collected during investigation by the Investigating Officer, which shows that the blood stains found on the clothes of the present applicant are identical and from one and same source of male origin and matched with the DNA profile obtained from the blood stains of the deceased. The incriminating article - knife is also seized at the instance of the present applicant. The PM report on record shows that the deceased had sustained grievous injuries, 5 in number and also sustained internal injuries. The deceased was operated for the said injuries, but he could not survive. Thus, prima facie material in the nature of the circumstantial evidence is there to connect the present applicant with the alleged

offence. Moreover, the circumstances under which the alleged incident has taken place is to be taken into consideration. For that trivial reason only because the deceased and informant have asked who thrown the bottles, they were assaulted by the present applicant and other co-accused. The informant has attempted to save the deceased, but he was also assaulted by the present applicant and other co-accused. The vital role is played by the present applicant in the alleged incident and they have not shown any remorse either to the deceased or the informant while assaulting them. Considering the prima facie material against the applicant which connects him with the alleged offence and trial is already commenced and may be concluded in near future. The application deserves to be rejected. Accordingly, I proceed to pass the following order :-

ORDER

6. The application is rejected.

[URMILA JOSHI-PHALKE, J.]