



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

CRIMINAL APPLICATION (BA) NO. 94 OF 2024

AMAN S/O DUKSHOR KAITHWAS

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 Amol G. Hunge, Advocate for applicant.
Ms. H. S. Dhande, A. P. P. for respondent-State.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 08/03/2024.

1. The applicant came to be arrested on 15/06/2023 in connection with Crime No.576/2023 registered under Sections 302, 143, 147, 148, 149 and 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Prakash Kaithwas, who alleged that on 15/06/2023, there was some quarrel between the deceased Deepak Kaithwas and the co-accused Gaurav Lidbe, Arjun Kaithwas, Pratham Patil and present applicant. Initially, there was friendship between them, but some discord was there between them and therefore, there was rivalry. It is further alleged that on 14/06/2023 at about 8.00 p.m., his brother informed him that there was quarrel between him and Arjun Kaithwas and he gave an understanding to Arjun Kaithwas. Thereafter, the deceased went out of the house and not

returned back. During investigation, it revealed that it was the present applicant and other co-accused who followed the victim and assaulted him by means of fist and kick blows as well as by the stone, due to which, he sustained grievous injuries. On the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the alleged incident is concerned, only one eye-witness whose statement is recorded by the Investigating Agency. That statement is also not inspiring the confidence as in 161 statement he assigned the role to the present applicant that present applicant has assaulted deceased by the fist and kick blows, whereas 164 statement, the general statement is made that applicant had assaulted the deceased by means of stone and cement pipe. He submitted that now, the investigation is completed and charge sheet is filed. The co-accused Yogesh Madavi to whom the similar role is attributed by the eye-witness is released on bail. Therefore, on the ground of parity also, the present applicant shall be released on bail.

4. Learned APP strongly opposed the application on the ground that there is prima facie material against the present applicant. She submitted that not only in the statement of eye-witness, but the circumstances that recovery of the blood stained clothes and other material which connect the present applicant with the alleged offence. The present applicant and other co-accused in

furtherance of their common object, followed the deceased and assaulted by means of cement pipe and the stones which resulted into his death. Considering the prima facie material, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. There is no dispute as to the fact that there is previous enmity between the deceased and the present applicant and the co-accused. Prior to the incident also, the quarrel took place between the present applicant and the deceased and the brother of the deceased. As per the allegation, brother of the deceased has given understanding to the present applicant and other co-accused. On 14/06/2023, the deceased left the house and not returned back. The informant came to know about the alleged incident in the mid-night i.e. during intervening night of 14/06/2023 and 15/06/2023. When the informant reached to the hospital, deceased was already declared dead. The medical report shows that deceased was brought to the hospital in a dead condition. The PM report shows that deceased has sustained in all 10 injuries which are in the nature of lacerated wound and the death of the deceased was due to head injury. During investigation, the Investigation Officer has recorded the statement of one Sushil @ Bhurya Singarwar whose statement under Section 164 as well as 161 was recorded. During 161 statement, he attributed the role to the

present applicant that present applicant followed the deceased and assaulted him by fist and kick blows. Whereas 164 statement, the general statement is made that present applicant and the other co-accused assaulted the deceased by means of cement pipe and stones. Thus, considering the role, the inconsistent statement is made by the eye-witness. At this stage, the veracity of the statement of the witness is not to be commented upon, whether the prima facie case is made out or not is to be seen. Admittedly, the co-accused to whom the role is assigned is released on bail by the Sessions Court. In view of statement under Section 164 only role is assigned to present applicant by giving general statement that all accused have assaulted by means of stones and cement pipe. Whereas 161 statement shows the role of the present applicant to the extent of assault by the fist and kick blows. Considering the ground of parity is available to the present applicant as similar role is attributed to the co-accused who is released on bail. Now, investigation is already completed and charge sheet is filed. Considering the role attributed to the present applicant by the eye-witness, the applicant can be released on bail by imposing certain conditions. Accordingly, I proceed to pass the following order :-

ORDER

- i] The application is allowed.

ii] The applicant - **Aman S/o Dukshor Kaithwas** be released on bail in connection with Crime No.576/2023 registered under Sections 302, 143, 147, 148, 149 and 34 of the Indian Penal Code, on executing P. R. Bond of Rs.25,000/- with one solvent surety of the like amount.

iii] The applicant shall not enter into the vicinity of Ballarpur, within the jurisdiction of Ballarpur Police Station, Dist. Chandrapur, till culmination of trial.

iv] The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.

v] The applicant shall attend the Court proceedings regularly without seeking any exemption, unless there are exceptional circumstances.

vi] The contravention of any condition imposed on the applicant would result into cancellation of bail.

6. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]