



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

CRIMINAL APPLICATION (BA) NO. 461 OF 2024

Devendra s/o Purushottam Awari Vs 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. C.D. Rohankar, counsel for the applicant.

Mrs. H.N. Prabhu, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/08/2024.

1. The applicant came to be arrested on 14/10/2023, in connection with Crime No. 658/2023 registered with Police Station Chandrapur City for the offence punishable under Sections 302, 323, 326 read with Section 34 of the Indian Penal Code, 1860.

2. It is submitted by the learned counsel for the applicant that the deceased is the brother-in-law of the present applicant. On 14/10/2023, at about 5:00 p.m., when he had been at his house, he received a phone call from his sister, and she disclosed that her husband, i.e., the deceased, was under the influence of liquor and assaulting her. He immediately proceeded on motorcycle at the house of his sister, wherein he found the deceased was under the influence of liquor, and he was assaulting her by means of an iron rod. Therefore, he went to intervene in the same, but in that intervention, he received the injuries. The deceased has also threatened him that he will kill him. Thereafter, he approached the police station and lodged the report.

Subsequent to the said incident, a report was lodged against the present applicant vide Crime No. 658/2023, alleging that there was a quarrel between the present applicant and the other family members and wife of the deceased. In the said quarrel, the wife of the deceased, the present applicant, and the other family members of the present applicant assaulted the deceased. In the said incident, the present applicant was given a blow by the sticks on the head of the deceased, and he sustained the injury. He was admitted to the hospital on the same day i.e. on 14/10/2023, and he succumbed to death on 07/01/2023.

3. Learned counsel for the applicant submitted that considering the scenario in which the alleged incident has taken place, the deceased was assaulted as per the allegation, only because he was assaulting the sister of the present applicant, and while intervening in the said quarrel and to save the sister, the scuffle took place, and in that scuffle, the deceased has sustained the injury. There is no instantaneous death of the deceased, but he died after approximately four months of the incident. Now, the investigation is already completed and charge-sheet is filed, at the most, the case of the applicant is covered under Section 304 of the IPC. There was no intention or motive to commit murder or to eliminate the deceased. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required, and therefore, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that story of the applicant is that, as to the quarrel and the assault by the deceased is one of the co-accused, who is the sister of the present applicant, is not supported by any of the eye-witnesses. She further submitted that the present applicant has given a blow by stick on the vital part of the body, and thereafter, the deceased succumbed to death while taking treatment. Considering the gravity of the offence, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that there was a quarrel between the deceased and the present applicant and other relatives of the present applicant. There is no dispute that the wife of the deceased is the sister of the present applicant, and the present applicant had been there on the call of his sister, and the quarrel took place between him and the deceased. In that quarrel, the blow of stick was given to the deceased, and the deceased succumbed to death after four months. Even after taking into consideration the statements of the eye-witness as it is, apparently there was no intention to eliminate the deceased, but the incident occurred during the scuffle which took place, as there was a dispute between the husband and wife, and the present applicant intervened in the quarrel. Now, investigation is already completed and charge-sheet is already filed, whether there was an intention to commit murder or if there was any other motive, is a matter of evidence. At this stage, considering the circumstances under

which the alleged incident has taken place, prima-facie, there was no previous dispute and no premeditation by the present applicant to assault the deceased. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] The applicant- Devendra s/o Purushottam Awari shall be released on bail, in connection with Crime No. 658/2023 registered with Police Station Chandrapur City for the offence punishable under Sections 302, 323, 326 read with Section 34 of the Indian Penal Code, 1860, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of village Marda, District Chandrapur till culmination of the trial.
- d] The applicant shall attend the proceedings without seeking any exemption unless there are exceptional circumstances.
- e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application stands **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]