



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

CRIMINAL APPLICATION (BA) NO.637/2024

Abdul Rahman Abdul Jabbar Vs. The State of Maharashtra

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

Court's or Judge's orders

Shri P.W. Mirza, Advocate for applicant
Shri U.R. Phasate, APP for non-applicant/State
Shri Digvijay Mankar, Advocate assisted to prosecution

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/09/2024

The applicant came to be arrested on 02/02/2024 in connection with Crime No.122/2024 registered with Police Station, Pandharkawada, District Yavatmal, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Ramesh Maroti Kunghadkar, alleging that his nephew Sachin Kunghadkar was found dead on a street on 02/02/2024. After receipt of the information from his son, he immediately rushed towards the spot and saw that the dead body of the deceased was lying on Mangurda Wai Road. Therefore, he lodged the report against the unknown person. During investigation, it reveals that there was previous enmity between the co-accused and the deceased. On the date of the incident also, they consumed the liquor together in wine shop and, thereafter, proceeded together. The CCTV footage was collected by the investigating

officer and on the basis of the said CCTV footage, as the deceased was seen lastly in the company of the present applicant and other co-accused, they were arraigned as an accused. During the investigation, the investigating officer has recorded the various statements from which the involvement of the present applicant is revealed, therefore, after completion of the investigation, the chargesheet is filed.

3. Learned Counsel for the applicant submitted that there is no direct evidence to connect the present applicant with the alleged offence. As far as the evidence, on which, the prosecution relied upon, is in the nature of circumstantial evidence and the circumstances, on which, the prosecution relied upon are motive, last seen, recovery of the blood stained clothes and CDR report. He submitted that as far as motive is concerned, which is not attributable to the present applicant as there was no previous enmity between the present applicant and the deceased, but the enmity between the co-accused and the deceased. He submitted that as far as the last seen is concerned, except the presence of the present applicant, no overtact is attributed to him and as far as the recovery of the blood stained clothes is concerned, the CA report is yet to be received and, therefore, it is to be established whether the stains found on the clothes of the present applicant are of oozing blood or not. He submitted that even accepting the allegation as it is, at the most, role attributed to the present applicant is

that he was accompanying the other co-accused. The circumstances, on which, prosecution relied upon are not sufficient to connect the present applicant with the alleged offence. Even accepting it is, at the most, it can be ascertained that there was sudden fight sudden quarrel and in that sudden quarrel, the death of the deceased is occurred.

4. In support of his contention, he placed reliance on the decision of this Court in ***Criminal Application (BA) No.238/2022 (Ashish s/o Madhukar Wararkar Vs. State of Maharashtra)*** and ***Criminal Application (BA) No.685/2024 (Kishor Kathalal Tode and another Vs. State of Maharashtra and another)*** decided on 20/08/2024 and ***Gudikanti Narasimhulu and others Vs. Public Prosecutor, High Court of Andhra Pradesh, reported in (1978) 1 SCC 240.***

5. Per contra, learned APP strongly opposed the said application and invited my attention towards the various statements of the witnesses, which show that on the day of incident, the applicant as well as other co-accused and deceased were seen in the company of each other. From the CCTV footage also reveals that they left the place i.e. bar after consuming the liquor and thereafter they were witnessed by the witnesses going together on the motorcycle, thereafter, deceased was not seen alive by anybody. Thus, after the deceased was seen lastly in the company of the present applicant and other co-accused, he was not seen alive and there is no period for the intervention

of the third person. Thus, he submitted that the death of the deceased is caused due to the head injury, when the deceased was in the company of the present applicant and other co-accused. The CCTV footage as well as the medical evidence in the nature of the query report and seizure of blood stained clothes, unerringly points out towards the guilt of the accused. The guilt of the present applicant to show his involvement in the alleged crime. Considering the nature of the evidence collected during the investigation, which points out the involvement of the present applicant in the alleged offence. In view of that, application deserves to be rejected.

6. After hearing the learned Counsel for applicant and learned APP for the State and learned Counsel for the complainant, perused the investigating papers. Admittedly, the First Information Report is lodged against the unknown person. During investigation, it revealed to the investigating officer that prior to the death of the deceased, the deceased was in the company the present applicant and other co-accused. The statements of the witnesses namely Lokchand Bhaurao Rathod, Satish Vijay Chavhan, Prajwal @ Shubham Surendra Sarate, are recorded, from which, it revealed that, on the day of incident i.e. 1.2.2024, the bar owner started his bar and the present applicant, other co-accused and deceased had consumed the liquor in the said bar and, thereafter, they left the hotel by paying the bills. There was

dispute amongst them on payment of the bills, but they left the hotel together. Thereafter, deceased and the present applicant were also seen by the other witnesses proceeding on a motorcycle. The statements of Shahid @ Appu Kureshi Shabbir Kureshi and Sheikh Rajik Sheikh Musthaq, substantiated the said facts. Thereafter, the deceased was found dead.

7. The post mortem report shows that the death of the deceased is due to the 'head injury'. After arrest of the present applicant, present applicant gave a memorandum statement and at this instance, blood stained clothes of the present applicant are seized, which are forwarded to the Chemical Analyser. The weapons, which was recovered from the spot, was forwarded to the medical officer who has drawn the digram of the said weapon and opined that the injury caused to the deceased person can be caused by above mentioned weapon.

8. The CCTV footage panchnama also substantiated the fact that the present applicant along with the deceased and the co-accused proceeded together. Thus, as far as the circumstantial evidence is concerned, the circumstances that last seen together, recovery of the blood stained cloths and the medical evidence sufficiently show that the death of the deceased is occurred due to the assault by the weapon which is used in commission of the crime.

9. As far as the reliance of the applicant on two

orders of this Court is concerned, in Criminal Application (BA) No.685/2024, the facts show that there was sudden fight sudden quarrel and during the sudden quarrel, the accused therein picked up the sticks and gave a blow of that stick. Therefore, the facts are not identical with the present case and therefore, this decision is not helpful to the present applicant to release him on bail.

10. In Criminal Application (BA) No.238/2022, similar facts are not identical with the present case and, therefore, that decision is also not come to the assistance of the present applicant.

11. As far as the decision on which the learned Counsel for the applicant relied upon in ***Gudikanti Narasimhulu and others*** (*supra*), wherein the principles and consideration for grant of bail are considered, wherein the Hon'ble Apex Court considers that the granting or refusing of bail is in the discretion of the Court and it is necessary that certain guidelines should be laid down for the exercise of the discretion. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice to the individual involved and the society affected. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted or if the conviction is confirmed also bears upon the issue. Another relevant

factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is rational to enquire into the antecedents of the man who is applying for bail to find out whether he was a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

12. After giving due consideration of the observations of the Hon'ble Apex Court and the considerations, which are laid down by the catena of the decisions by the Hon'ble Apex Court, as far as the bail is concerned, can be laid down that while considering the bail application, the Court has to consider the following circumstances i.e. the nature of the crime, the severity of the punishment, whether the applicant could be available for trial, whether there is apprehension of tampering of the witnesses or there is apprehension that applicant could be fled away if he is released on bail. If these considerations are applied to the present case, admittedly the involvement of the present applicant is in a severe offence, for which, punishment of life imprisonment as well as the punishment of death is provided. Considering the facts and the manner, in which, the deceased was assaulted and eliminated is a vital factor. Considering the circumstances, which shows the prima facie case

against the present applicant, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

ORDER

- (i) The application is rejected.

JUDGE

R.S. Sahare