



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

CRIMINAL APPLICATION (BA) No.778 OF 2024

(Rushabh @ Aayush s/o. Ajay Tambe Vs. State of Maharashtra, through PS
Gittikhadan, Nagpur)

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

Court's or Judge's orders.

Mr. R.S. Nayak, Advocate for applicant.
Mr. S.A. Ashirgade, APP for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 19th OCTOBER, 2024.

1. The applicant came to be arrested on 19.9.2022, registered with Police Station Gittikhada, Nagpur, for the offence punishable under Sections, 143, 147, 148, 302 and 326 read with Section 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act.

2. The crime is registered on the basis of report lodged by Ankit Gajanan Kasar, aged about 19 years, who alleged that on 16.9.2022 at about 1.00 p.m. when he left from his village Rasoni Polytechnic and was standing at Pan shop along with Sahil Dable, Parvesh and Anesh Gund. At the relevant time one Dipanshu Pandit came there and started quarreling and after a short quarrel he left the spot. It is further alleged that the informant received a call from one Aayush Thote, who informed that they have to go to the SFS College along with 5 to 6 boys as there was a quarrel starting between one Sahil with Aayush Thote. Immediately they gathered at SFS College, Hazaripahad

at around 2.30 p.m., at that time Dipanshu Pandit came there with 7-8 students and assaulted the informant by means of chair. When the deceased intervened in the quarrel the present applicant took out the knife and gave a blow of knife on his abdomen, due to which the intervenor i.e. Harsh succumbed to the death. In the said incident, the present applicant has also gave a blow of knife on the thighs of the informant due to which he sustained the injuries. On the basis of the said report the Police have registered the crime against the present applicant.

3. Heard Mr. R.S. Nayak, learned counsel for the applicant, who submitted that as far as the role of the present is concerned he is not the assailant, other co-accused are already released on bail on the ground of parity, present applicant to be released on bail. He further invited my attention towards the query report and submitted that as per the query report is opined that the injury by such weapon can be ruled out. He submitted that admittedly the knife is recovered at the instance of the present applicant but there is no material to show that it was present applicant who has given the blow by that weapon to the injured or the deceased. Now, the applicant is behind the bars since his date of arrest i.e. from 19.9.2022, trial is not commenced. In view of that, the applicant be released on bail.

4. Learned A.P.P. strongly opposed the said application and submitted that as far as role of the present applicant is concerned, who is identified during the identification parade. The statement of the injured witness sufficiently shows involvement of the present applicant. Thus, the role of the present applicant is completely different. Therefore, he cannot be equated with the other co-accused, who are already released

on bail. The role of the present applicant is vital role, who has given the blow on the person of the deceased as well as on the person of the injured, 19 years boy was eliminated due to the trifle reason. In view of that, the application deserves to be rejected.

5. After hearing the learned counsel for the applicant and learned A.P.P. for the non-applicant/State perused the investigation papers from which it reveals that initially there was a dispute between the informant and one Dipanshu on that count the second incident has taken place. As far as intention of the present applicant is concerned which can be gathered from the circumstance that he came at the spot of incident by carrying the knife with him and given a forceful blow on the person of the deceased. The Post Mortem report shows that the force was so that stab wound noted over lower lobe went upto the left lung and the left lung has sustained the injury of size 4 cm x 2 cm x parenchyma deep corresponding with the injury no.1 of column no.17. Thus, the intention of the present applicant can be gathered from the said circumstance. Therefore, the contention of the learned counsel that there was no intention but the deceased has sustained injury and in a sudden fight sudden quarrel is ruled out. Merely because there was a single injury is not sufficient to hold that the case is covered under Section 304 Part-I. While considering whether it is a culpable homicide according to murder or not amounting to murder the surrounding circumstances are required to be looked into. The weapon used by the present applicant and the part chosen by the present applicant for the assault sufficiently shows his intention to eliminate the deceased. Therefore, the contention of the

learned counsel that the case covered under Section 304, Part-I is not sustainable at this stage, because it depends upon the evidence which would be adduced before the trial Court. As far as the ground of parity is concerned admittedly the role attributed to the present applicant is different than the persons, who are released on bail. Therefore, the ground of parity is also not available to the present applicant. As far as delay in trial is concerned now charge is already framed as soon as the charge is framed is the initial stage of the commencement of the trial, through learned counsel referred judgment of the **KA Najeeb v. Union of India**, which is distinguished by the Hon'ble Apex Court in the case of **Gurwinder Singh Vs. State of Punjab and another, reported in 2024 LiveLaw SC 100**, wherein Hon'ble Apex Court has considered that the case of *KA Najeeb*, who has been in jail for last 5 years, which is contrary to law laid down in the said case. It is further observed that, 'While this argument may appear compelling at first glance, it lacks depth and substance. In *KA Najeeb's* case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this Court took it as a factor influencing its assessment to grant bail. Further, in *KA Najeeb's* case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and

was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and witnesses including the protected witnesses have been examined.' It is further observed by the Hon'ble Apex Court that, 'mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground for grant of bail. Hence, the aforesaid argument on behalf of the appellant cannot be accepted.'

6. In view of the above observation in the present case also 19 years boy was eliminated for the trifle reason. In view of that the application deserves to be rejected. Hence, I proceed to pass following order :

ORDER

(i) The application is rejected.

(ii) Considering the fact that applicant is behind bars since the date of arrest i.e. from 19.9.2022 learned Sessions Court shall expedite the trial and shall proceed with the trial and make every endeavour to dispose of the trial from within six months.

(iii) The prosecution and the defence counsel shall co-operate with the trial Court to dispose of the trial within six months.

7. The application is disposed of.

(Urmila Joshi-Phalke, J.)