



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

CRIMINAL APPLICATION (BA) NO. 789 OF 2024

Manisha w/o Omprakash Papde and others Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.C. Jaltare, counsel with Mr. Y.P. Bage, counsel for applicants.
Mr. H.D. Dubey, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 11/10/2024.

1. Applicant No.1 and 2 came to be arrested on 05/07/2024, in connection with Crime No. 374/2024 registered with police station Beltarodi, Nagpur for the offence punishable under Sections 143, 147, 302, 307, 504 read with Section 149 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Geeta Hemlal Sahu on an allegation that in the night of 09/06/2024, her brother Dilip Sahu had gone out and had not returned home till late night. Thereafter, she has made a phone call, which was picked up by a friend of her brother. The said friend informed her that her brother is not alive and asked them to immediately come to the government medical college. The informant then rushed to the hospital along with her son to see the deceased. At the relevant time, one Ashwin Nade, who happens to be the friend of the deceased, informed her that he received a phone call from Piyush Sontakke at about

11.00 p.m. to inform her that there was a scuffle near Shitala Mata Mandir at Kaikadi Nagar and they were beaten. It was further informed that he has confronted this fact by making a call to the brother of the informant. The brother of the informant has told him that while returning home, along with the raid conducted, they were intercepted by the brother-in-law, Ganesh Sahu, who was co-accused and scolded them for driving the two-wheeler so speedily. The brother-in-law has abused the brother of the informant, which resulted into scuffle, and thereafter the friend of the deceased, namely Bhushan, was assaulted, and in the said incident, the death of the deceased is caused. On the basis of said report, police have registered the crime against the present applicants.

3. Learned counsel, Mr. A.C. Jaltare for the applicants, submitted that as far as the applicant Nos. 1 and 2 are concerned, the applicant no.1 was described as a woman with a spectacle, and as far as the applicant No. 2 is concerned, no description is given in the First Information Report or any of the eye witnesses. He submitted that even accepting the prosecution case as it is, the only allegation against the applicant Nos. 1 and 2 is to the extent of assault by fist and kick blows. The death of the deceased is caused by the multiple injuries sustained by the deceased in the alleged incident. Thus, considering the role attributed to the present applicants, the death of the deceased is not caused by the assault by them. He submitted that, during the investigation, the statements of the eyewitnesses were also

recorded. The said eyewitnesses are six in number, and some of the eyewitnesses have assigned the role to the extent of assault by fist and kick blows, whereas some of the eyewitnesses have assigned the role that present applicant Nos. 1 and 2 have assaulted the deceased and other prosecution witnesses by means of bricks, stones, and plank of plywood.

4. The statement of the injured, who sustained the injuries in the alleged incident, has assigned the role only to extend of assault by fist and kick blows. He further submitted that, during the T.I. Parade, the applicant Nos. 1 and 2 were not identified. Thus, considering the entire investigation papers, the involvement of the applicant Nos. 1 and 2 itself is doubtful. In view of that, they be released on bail.

5. As far as applicant No. 3 is concerned, he submitted that he is not proceeding with his prayer for bail and withdrawing the application to the extent of applicant No. 3.

6. The learned APP strongly opposed the said application on the ground that the present applicants and the other co-accused formed the unlawful assembly, and in furtherance of the common object of the said assembly, they have assaulted the deceased, and the death of the deceased is caused. Death of the deceased is injury to the vital organs. The involvement of the present applicants is

revealed from the statements of the eyewitnesses. In view of that, the application deserves to be rejected.

7. After hearing learned counsel for the applicants and learned APP for the State, perused the investigation papers. There is no dispute as to the fact that the deceased was assaulted by the co-accused, and the death of the deceased is caused. As far as the injuries are concerned, the deceased has sustained the injury on the vital parts of the body, i.e. Walls, Ribs and Cartilages as well as pleura. The deceased has also sustained the injuries on the right lung, and due to the several injuries sustained by him, the death is caused.

8. Moreover, coming to the role of the applicant Nos. 1 and 2, admittedly, there are inconsistent statements of the eye witnesses. The injured eye witness assigned the role to the present applicant Nos. 1 and 2 to the extent of fist and kick blows. Whereas the other eye witnesses assigned the role of assault by bricks, stones, as well as plywood plank. Their statements under Section 164 of Cr.P.C. are also recorded, wherein they have not mentioned even their presence. During the investigation, the applicant Nos. 1 and 2 are placed for the T.I. parade. During the T.I. parade, the injured witnesses have not identified applicant Nos. 1 and 2 during the identification parade. He has only identified the applicant No. 3.

9. Thus, considering the role attributed to the present applicants, especially in the light of the statement of the injured eyewitnesses, the only role attributed to them is

assault to the extent of assault by fist and kick blows. Admittedly, the death of the deceased is not caused, due to the assault by fist and kick blows. Thus, considering the role attributed to the presents and considering the fact that, now investigation is completed and charge-sheet is filed, further incarceration of the applicant Nos. 1 and 2 is not required. In view of that, the application is partly allowed. Accordingly, I proceed to pass the following order:

- a] The criminal application is partly allowed.
- b] The applicant No.1 **Manisha w/o Omprakash Papde** and applicant No.2 **Omprakash s/o Kishor Papde** shall be released on bail, in connection with Crime No. 374/2024 registered with police station Beltarodi, Nagpur for the offence punishable under Sections 143, 147, 302, 307, 504 read with Section 149 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 50,000/- each with one solvent surety in the like amount.
- c] The applicant Nos. 1 and 2 shall not enter into the jurisdiction of Beltarodi District Nagpur till the culmination of the trial.
- d] The applicant Nos. 1 and 2 shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

- e] The applicant Nos. 1 and 2 shall attend the concerned police station once in a month on 1st of every month between 10.00 a.m. to 01.00 p.m. till the culmination of the trial.
- f] The applicant Nos. 1 and 2 shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.
- g] The application of the applicant No.3 is **disposed of** as withdrawn.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]