

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

CRIMINAL APPLICATION (BA) NO.604 OF 2023

(Akash Devidas Vidhane 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

Shri P.V. Navlani, Advocate for the applicant.
Shri I.J. Damle, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 31, 2023.

Heard.

2. Present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.650/2022 registered at police station Rajapeth, Amravati City for the offence punishable under Sections 302, 143, 147, 148 read with Section 149 of the Indian Penal Code.

3. The applicant is arrested on 05/08/2022 and since then he is in jail.

4. The accusation against the present applicant is on the basis of report lodged by one Bharti Sachin Mhaiskar who has alleged that on 04/08/2022 at about 8.00 p.m. when the deceased Sachin Mahiskar was returning on his two wheeler, he was restrained by the co-accused Ravi Ashokrao Ingole and assaulted him. On 05/08/2022 at about 1.00 a.m. one Mangesh @ Babu Purushottam Nagpure came to her house and informed her that her husband Sachin is lying in an injured condition near one stream. She immediately, went at the

spot of incident and injured was shifted to the hospital however, he succumbed to the death. As per the contention of the present applicant his name is not mentioned in the FIR. No specific role is attributed to him. Subsequently, on the basis of statement of one Usha Jogendra Borkar he is implicated in the alleged offence. She has not attributed specific role to him. Thereafter the statement of one Suraj Ramesh Mhaiskar which is recorded belatedly, the role was attributed to the present applicant is that he has assaulted the deceased by means of knife. As far as the statement of the said Suraj is concerned which is recorded belatedly and he is brought up witness. Except his statement no other material is collected during investigation to show the involvement of the present applicant. Now, the investigation is completed and the charge-sheet is filed. No purpose will be served by keeping the present applicant behind bar.

5. Said application is strongly opposed by the State on the ground that the involvement of the present applicant reveals from the statement of the eye-witnesses which shows that the present applicant has given a blow of knife on the person of the deceased. Thus, *prima facie* involvement reveals, hence application deserves to be rejected.

6. Heard Shri Navlani, learned Counsel for the applicant. He reiterated the contention and submitted that the statement of the alleged eye-witness is recorded approximately after 20 to 25 days. The witness is closed

relative of the deceased who has not disclosed the incident to the police prior to that. He is a brought up witness.

7. In support of his contention he placed reliance on the order of this Court in Criminal Application No.1180/2021 dated 06/12/2021 wherein also this aspect was considered by this Court and released the applicant on bail. He further placed reliance on the order of the Apex Court in the case of *Vishal Ramesh Bhadve Vs. The State of Maharashtra [Criminal Appeal No.408 of 2023]* wherein also the Hon'ble Apex Court has considered the only circumstance appearing on record against the petitioner is the statement belatedly recorded and released the petitioner on bail. He submitted that in view of the observation of this Court as well as the Hon'ble Apex Court, similar circumstances are in the present case also. Thus, the applicant be released on bail.

8. Learned Additional Public Prosecutor strongly opposed the application and submitted that not only the statement of the eye-witnesses but the recovery of the knife is also at the instance of the present applicant. The offence is of a serious nature. In view of that the application deserves to be rejected.

9. Having heard both the sides and on perusal of the investigation papers, it reveals that the crime is registered on the basis of report lodged by wife of the deceased namely Bharti Sachin Mhaiskar. Admittedly, the name of the present applicant is not mentioned either in the FIR or her statement. During investigation, the

Investigating Officer has recorded the statement of Usha Jogendra Borkar on the basis of which first time the involvement of the present applicant is revealed. She has made general allegations against the present applicant that he was also present along with Ravi Ingole and then all have attacked on the deceased. From her statement, it reveals that due to fear she went inside the house and not witnessed the further incident. As far as the statement of the other witnesses is concerned none has stated about the presence of another eye-witness Suraj Ramesh Mhaiskar at the spot of incident. Even the witness Usha Jogendra Borkar has not stated about the presence of said eye-witness Suraj Ramesh Mhaiskar at the spot of incident. Said Suraj Ramesh Mhaiskar is the cousin brother of the deceased. His statement was recorded on 30/09/2022 when the alleged incident has taken place on 05/08/2022. From his statement it further reveals that he has chased the assailants to some extent. However, he has not approached to the police and not disclosed about the names of the assailants.

10. Shri Navlani, learned Counsel for the applicant placed reliance on the order of this Court wherein this aspect is considered and held that none of the witnesses have pointed out the presence of the eye-witness on the spot of incident and subsequently, by belated statement the name of the applicant was disclosed as an assailant. The Hon'ble Apex Court has also considered this aspect in the order passed in Criminal

Appeal No.408/2023. The similar circumstances are in the present case also. Though incident occurred on 05/08/2022 the statement of the alleged eye-witness were recorded on 30/09/2022. The presence of the Suraj Mhaiskar is neither mentioned by the wife of the deceased nor mentioned by the other eye-witnesses that is namely Usha Jogendra Borkar. No explanation is put forth regarding the belated statement of the said eye-witness. The other eye-witness who do not point out the presence of the present applicant at the spot of incident. Though weapon is recovered the panchnama nowhere shows any blood stains on the said weapon. As observed by this Court as well as the Hon'ble Apex Court the only circumstance appearing on record against the petitioner is a statement belatedly recorded on 10/10/2022. Here also the belated statement was recorded on 30/09/2022. Now, the investigation is completed and charge-sheet is filed. Considering the nature of the evidence to connect the present applicant, the present applicant has made out the case to release him on bail. In view of that the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Akash Devidas Vidhane in Crime No.650/2022 registered at police station Rajapeth, Amravati City for the offence punishable under Sections 302, 143, 147, 148 read with Section 149 of the Indian

Penal Code, be released on bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity which comes under the Rajapeth, Amravati City police station till conclusion of trial.

(iv) The applicant shall attend concerned Police Station as and when required for the investigation purpose.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(vi) The applicant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*