



In The Court of Additional Sessions Judge-7, Nagpur.

Presided over by
Shri. P. M. Nagalkar.

I. A. No.1 of 2024.

Session Case No.484 of 2024.

CNR No: MHNG010104732024.

Crime No.241 of 2024, P. S. Parshivni.

State of Maharashtra.
(Through P.S.Parshivni.)

V/s

Jageshwar Vitthal Thakre and ors.

Applicant/Accused : *Mangesh Pilaji Shiwankar.*

Order below Exh.6
(Date: 2^{ns} December 2024)

1. This is an application for issuance of directions as applicant/accused Mangesh Pilaji Shiwankar, be released on bail, U/Section 483 of Bhartiya Nagarik Suraksha Sanhita. Applicant/accused booked in Crime No.241 of 2024, for the offences punishable U/Sections 302, 201 r/w 34 of the Indian Penal Code and Section 4/25 Arms Act.
2. Perused the application along with documents annexed here with and say/report filed at Exh.7 of Investigating Officer/APP. Heard both the sides at length.
3. In the light of this facts emerged, submissions by the parties and material on the record, the following points arise for determination before this Court. The said points and the findings thereon which

follow the reasons as:

Point For Determination.

| Sr. No. | Point | Finding |
|------------|---|---|
| 1. | Whether the applicant/accused <i>Mangesh Pilaji Shiwankar</i> , made out the case as to issuance of direction as to be released on bail, in the given set of facts? | ...No.. |
| 2. | What order? | ...Application rejected as per final order. |

REASONS

As to the point no.1:

4. It is case of the applicant that the present applicant is doing job of Mistri and no more concerned with this crime. He had been arrested on 29/06/2024 on the basis of statement of co-accused. It is submitted that there is no intention or motive on the part of applicant. There is no premeditation and no criminal antecedents against him. He is unmarried person and having sole earning of members of his family and dependency of his parents. Therefore, application be allowed.
5. On the other hand the application strongly opposed on the ground that memorandum on record, P. M. report and one used and recovery of discovery CDR allegations of the present applicant shows at the spot or near thereby. The witness also stated about his present at the time of incident at the spot.
6. The offence is serious and punishable with death or imprisonment for life. Though the charge-sheet filed, but there is no case made out for bail as the offence of murder. Hence, claimed that the application be rejected.

7. The Investigating officer had filed their say and also stated the facts and opposed the application as stated by the Learned APP
8. It is submitted on behalf of the accused persons that one of the accused Dnyaneshwar Chavan released on bail by this Court and therefore, both the applicants are also entitled for bail on the principle of parity.
9. On behalf of the prosecution it is submitted that each case is to be considered on its own merits. The allegations against the applicant and allegations and record revealed the material as against the accused No.3 is not at par and therefore, principle of parity is not applicable.
10. The allegations as inferred from the FIR that complaint lodged by Khushal Namdeorao Thakre, father of the deceased Nitin on 26/06/2024. *Inter alia*, it is contended that his daughter in law was pregnant and hence, deceased took her at Hospital at Nagpur and admitted on 25/06/2024. At around 12.00 noon hours wife of deceased called the informant and asked to her daughter and her mother to bring at Hospital. As such he took them proceeded from Hospital by that time Nitin came there and they went along with Nitin and he returned back.
11. Deceased Nitin left Hospital at around 2.35 pm and left his daughter at place of his sister Vinita at around 4.30 and then again left Hospital on the pretext that he was going to his in laws' house at Kamptee, but thereafter he did not turn up. In the evening the informant called his brother in law of the deceased who told that he left Kamptee at around 7.30, but on that day he did not turn up.

12. On 26th in the morning at about 8.30 am he had been told by one Naresh Dhone, that his son Nitin lying with serious injury on his neck and his vehicle bearing No. MH-49-A-7571. He immediately went to spot where police and other people were already present and found Nitin was dead. Hence, he lodged complaint accordingly.
13. On this count investigation was made and it was revealed that during investigation and from CDR. He had quarreled on account of liquor with accused No.1 and 2 at their Dhaba. Both the accused No.1 and applicant and on the basis of memorandum of statement made by them the alleged weapon was seized and it was revealed that accused No.1 and 2 had assaulted deceased by means of knife and Bamboo stick on his head and then both took him for vehicle and left at the place. The motive or reason for his death during quarrel the deceased allegedly told that he refused liquor then would face dire consequences as earlier he had put set on fire at his Dhaba.
14. As such from statement of witnesses and memorandum of statement and recovery of weapon as it is clear discovery of the facts as involvement of the applicant is duly corroborated by the statement of witnesses as to show role played by the applicant is clearly attributed crime of murder.
15. In this backdrop as it is submitted that even it is assume that there was death but the case is not came within the purview of culpable homicidal as not amounting to murder. As from the record as earlier observed it is submitted that deceased call liquor and the applicant accused No.1 had denied him. However, the deceased told him that he had earlier set on fire his Dhaba and will also repeat the same. As such, it is case of without premeditation or motive.

16. However, from record photographs and P. M. report itself show that it was cold blooded murder as it is not case of the assault by means of any stick or fist blow, but weapon like knife and wooden stick used to assume on his head of the deceased. In this backdrop it is not just and proper at this stage to draw the inference that it is case of culpable homicidal as amounting to murder.
17. Since, the legal principle that for grant of the offence punishable with death or life for imprisonment then prima facie has to be seen on the basis of material on record without evaluating evidence. If it is found affirmative the accused has to show that there is no reasonable ground of his involvement since, the presence itself is not ground as circumstantial evidence.
18. There is nothing witness as regarding quarrel. In this backdrop it cannot be said that the applicant had made out case as to held that there is no reasonable ground of being guilty in the crime.
19. As far as the application of principle of parity is concerned the accused No.3 was employee and there is nothing against him. Whatever role played in the crime is prima facie established by accused No.1 and 2 i.e. applicant and other accused, therefore, principle of parity is not applicable. Merely charge-sheet filed after investigation and are having dependency of their family itself is not ground to grant bail for the offence like murder. Hence, it is not fit case to exercise the discretion of bail. Hence, the finding of point no.1 is recorded as '**Negative**'. Consequently, proceed to pass following order.

ORDER

1. Application (Exh.6) is hereby rejected.

Dictated and pronounced in open Court.

Date : 2nd December 2024.

(Pramod M. Nagalkar)
Additional Session Judge-7, Nagpur