

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3677 OF 2015
[Sachin s/o Ananda Marathe Vs The State of Maharashtra]

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

Court's or Judge's orders

Shri R.N.Dhorde, Senior Advocate i/b
Shri N.B.Suryawanshi, advocate for applicant
Shri V.H.Dighe, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.
DATED : 24th July, 2015

PER COURT :-

- 1] This is an application for regular bail.
- 2] The applicant is arrested, in connection with Crime No. 9 of 2015, registered with police station Erandol, District Jalgaon, for the offences punishable under Sections 302, 201, 120-B r/w 34 of the Indian Penal Code.
- 3] Yesterday i.e. on 23.7.2015, the detailed submissions were made by the learned Senior Counsel Shri R.N.Dhorde i/b Shri N.B.Suryawanshi for the applicant. Learned Additional Public Prosecutor was also heard extensively.

During the course of the arguments, to the query made by this court in respect of whether there are any phone calls in between the present applicant and other co-accused, learned Additional Public Prosecutor Shri V.H.Dighe, sought time till today, in order to obtain necessary instructions from the investigating officer.

Consequent to the same, today the investigating officer is present in the court. The learned Additional Public Prosecutor, from the instructions from the investigating

officer, categorically made a statement that there are no phone calls in between the present applicant Sachin, who is accused no.2 with other accused no.1 Nagraj or accused no.3 Pankaj. He submitted that at no point of time there are phone calls in between these accused, however, he submitted that there are phone call details in between the present applicant and the deceased, however, it has little significance in view of the fact that the present applicant and deceased were partners in a business, therefore, much importance cannot be attached to the said phone calls.

4] The investigation is over. The investigating officer has already filed charge sheet. The applicant Sachin is accused no.2.

5] Deceased is one Balu Ramu Patil. On 30.1.2015, he left his house situated at Jahangirpura of Erandol town and he did not return, therefore, a missing intimation report was lodged with the police station on 31.1.2015 by his brother Trimbak, which was registered as Missing Case No. 1 of 2015.

On 1.2.2015, a motor cycle was found near the agricultural field of Dr. Mahajan near a canal and on 2.2.2015 body of Balu Ramu Patil was found in a gunny bag in a canal at Dharangaon. On 2.2.2015 Crime was registered against unknown person on the basis of report lodged by Dagdu Ramu Patil another brother of the deceased.

The present applicant was arrested on 7.2.2015. He was in the police custody remand till 14.2.2015 and thereafter he is in judicial custody.

6] The entire case of the prosecution is based on circumstances. There is no eye witness account. Further there is no direct circumstantial evidence against the present applicant.

7] According to the prosecution case and which is also not disputed by the applicant that the applicant and the deceased were partners in commission business of cotton. Only this fact is admitted by the applicant.

8] According to the prosecution, the present applicant owes Rs.25 Lacs to the deceased and on that count the deceased is eliminated. The prosecution is relying on the statement of Padma widow of the deceased and her daughter Shubhangi.

9] During the course of the investigation, the investigating officer has recorded three statements of these two ladies. The first statement of Padma and Shubhangi is recorded on 3.2.2015. Their second statement is recorded on 7.2.2015; whereas their last statement is recorded on 16.3.2015.

Their first statement is completely silent about either taking the name of the present applicant or disclosing anything about the monetary transaction between the present applicant and the deceased.

In the second statement, which is recorded on 7.2.2015, as per the statement of Padmabai, Rs. 25-30 Lacs of deceased were with the present applicant and that amount was demanded on 2-3 occasions by the deceased, however, according to the said statement, the present applicant has stated to the deceased that he will be giving the amount to him.

10] In the Statement of Padmabai recorded on 16.3.2015, much after from recording of her first statement, she has stated that there is one diary in which it is written down that the present applicant has taken Rs.25 Lacs from the deceased.

Seizure panchanama shows that the said diary is seized on 6.3.2015 from Dagdu Ramu Patil the brother of the

deceased, however, statement of Dagdu is not recorded on 6.3.2015. His statement that he has handed over the diary is also recorded on 16.3.2015, however, from the seizure memo it is clear that the said page is not signed by the present applicant.

The learned Additional Public Prosecutor has stated that the said diary and hand writing is already sent to the Hand Writing Expert.

11] On the record, there is nothing to show that the present applicant was to give amount of Rs.25 Lacs as claimed by the prosecution. It has only reference in a diary. The hand writing is not still established that it is of present applicant.

Except this, there is no evidence available on record to show that prior to the death of deceased at any point of time there was any quarrel between the present applicant and the deceased.

12] The investigation is already over. When the applicant was in police custody remand, nothing is discovered at his instance under Section 27 of the Evidence Act. In view of such feeble evidence, the liberty of the applicant cannot be curtailed. In that view of the matter, I propose to pass the following order.

ORDER

- (i) Criminal Application is allowed.
- (ii) Applicant-Sachin s/o Ananda Marathe, in connection with Crime No. 9 of 2015, registered with police station Erandol, District Jalgaon for the offences punishable under Sections 302, 201, 120-B r/w 34 of the Indian Penal Code, be released on bail, on he executing P.R. bond of Rs.One Lac with two solvent sureties in the like amount.

- (iii) Bail before the trial court.
- (iv) The applicant-Sachin shall attend Erandol police station once in a fortnight, preferably on every Sunday in between 3.00 p.m. to 5.00 p.m. till trial is over.
- (v) The applicant-Sachin shall also give his cell number to the investigating officer.
- (vi) The applicant-Sachin shall not indulge in any activity which will cause prejudice to the prosecution case.
- (vii) Application is disposed of.

(V.M.DESHPANDE, J.)

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