

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

Criminal Application [BA] No.95 of 2015

(Sonu @ Ghanshyam s/o Dilip Manghale

vs.

The State of Maharashtra, through P.S.O. Mehkar, District Buldhana)

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

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Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 11, 2015.

Heard Mr. A.S. Mardikar, the learned Senior Counsel for the applicant and Mrs. S.S. Jachak, the learned A.P.P. for the non-applicant/State.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.132/2014, registered at Mehkar Police Station, District Buldhana for the offences punishable under Sections 302, 201, 120-B, 109 read with Section 34 of the Indian Penal Code.

The case of the prosecution against the applicant is, the applicant is the restaurant owner and running his restaurant at Village Khandala Devi, Tahsil Mehkar, District Buldhana. On 24/08/2014, one Madan Chaudhari, who was taking a morning walk in his agricultural field, found a dead body of an unknown person. He found that there were injury marks over the body and the same was covered with a quilt having blood stains. The informant-Madan immediately informed the neighbouring field owner Ramzan, and along with Ramzan, he made report to Mehkar Police Station. The investigating agency, which was set in motion, collected the material in the investigation viz. recording of the statement of the witnesses, collection of medical evidence i.e. the postmortem report etc.

Mr. Mardikar, the learned Senior Counsel in his detailed submission, by referring to the material collected by the investigating agency concluded in filing the charge-sheet, submitted that the only material foisted against the applicant as an incriminating material connecting the applicant with commission of crime is, recovery of weapon i.e. an axe. He submits that this recovery by itself without having any other supportive material is neither sufficient enough nor subsequently enough to allege the applicant's role played in the offence. The learned Senior Counsel then submits that the statement of one witness viz. Gajanan is recorded by the investigating agency. Even this statement hardly makes out any case of alleged theory of last seen against the applicant. He submits that the applicant was arrested on 26/09/2014 and since then he is behind the bars. He further submits that thus the case against the applicant is on the basis of the circumstantial material and those circumstances hardly establish any link or hardly reflect any positive material against the applicant. He submits that with such insufficient material, the detention of the applicant for further indefinite period in custody is unjustified.

Mrs. Jachak, the learned A.P.P. vehemently opposes the application. The learned A.P.P. vehemently submits that the victim was an employee of the applicant and was working as a cook in his restaurant/hotel. The learned A.P.P. further submits that on the fateful day, there was a quarrel between the applicant and the victim. The victim hurled abuses against the applicant. The applicant was enraged with the reply of his own employee. The applicant than in the late hours of the night committed murder of the victim and with the assistance of the other accused persons picked up the dead body from the field and threw it in the agricultural field of Madan Chaudhari. The learned A.P.P. though vehemently submitted that there were a

motive behind this crime, namely the reply of the victim, which loured up the applicant resulting in commission of the crime. The learned A.P.P. availed the support from some material, which certainly not helpful for the prosecution, namely the statement of the co-accused. The other material, on which the learned A.P.P. placed reliance, is the statement of Gajanan. The statement of Gajanan reveals that Gajanan only makes reference to his visit to the hotel on the invitation of the applicant and having dinner there. The learned A.P.P. placed heavy reliance on this statement so as to suggest that the applicant was carrying a grudge against the victim. Considering this statement, the only reference of the Gajanan against the act of the applicant is, the applicant was addressing the victim in harsh and abusive language. Thus, by this reference itself, one cannot jump to a conclusion that the applicant was wholly enraged that he thought of taking an ultimate step of commission of serious offence under Section 302 of the Indian Penal Code. The other material is in the form of recovery of an axe.

Mr. Mardikar, the learned Senior Counsel for the applicant was justified in submitting that this material is only the recovery of an axe at the instance of the co-accused. Thus, there was considerable merit in the submission of Mr. Mardikar that worth of this material itself is shaking and suspicious. The investigating agency is not recorded any statement of the employee of the applicant apart from those, who are arrayed as accused, at least to show that there was an incident of quarrel between the applicant and the deceased, wherein the deceased reiterated and replied the applicant giving abuses.

Thus, considering the material referred above, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail. The apprehension of the State can be taken care of by imposing the conditions on

the applicant.

In the result, the application is allowed. The applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two sureties in the like amount on the following conditions.

- i. The applicant to attend Mehkar Police Station, District Buldhana on every Sunday of the month from 09:00 a.m. to 12:00 noon and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer, till commencement of the trial.
- ii. The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicant to submit his residential address and contact numbers, such as phone/mobiles numbers, to the investigating agency or in case of change.
- iv. In case the applicant is moving out of the area of Mehkar Police Station, he shall take permission and inform the concerned Police Station about his visit to other place.

In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that these observations of the Court are for deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial and proceed with the trial on the material made available to him and its own merits.

The application is disposed of as such.

JUDGE

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