

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

Criminal Application [BA] No.99 of 2015

(Wasudeo Ganpat Tawade

vs.

The State of Maharashtra, through P.S.O. Amgaon, District Gondia)

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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 5, 2015.

Heard Mr. R.M. Daga, the learned Counsel for the applicant.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.60/2014, registered at Amgaon Police Station, District Gondia for the offences punishable under Sections 304-A, 302, 120-B and 201 of the Indian Penal Code.

It is the case of the prosecution that the applicant was aggrieved of the share in the property and carrying a grudge against his brother Bhagwat Tawade. On 13/06/2014, Police Patil of the village Shivni received a phone call from one Ekraj, thereby it has been informed that a TATA Sumo vehicle was found in a water-stream upside down and the driver in dead condition. The Police Patil made report to police authority of Amgaon Police Station. In the process of the investigation,

material was collected by the agency concluding in filing charge-sheet. The case against the applicant as per the version of prosecution is, the applicant hatched a plan to eliminate his brother-Bhagwat. One Nilu had been to the house of victim under the guise of hiring his vehicle. The victim used to provide his vehicle for passenger carrier. The victim was then killed by the accused persons. To give effect to the plan hatched, the applicant sought help of accused Nilu and other accused viz. Rajesh and Sanjay. A show was made of a vehicle accident to cover up the murder, is the case of the prosecution.

The learned Counsel for the applicant submits that the whole case of the prosecution rests on only circumstance, that too all these circumstances are scattered and no link can be formed so as to have a supportive value to these circumstances against the applicant. He submits that merely because of some statements made by the applicant that he was not having good terms with his brother on account of property, the case is made up against the applicant. The learned Counsel by referring to the material, namely the Vehicle Inspector Report, the Spot-Panchnama and the Inquest-Panchnama, submits that this material may support a case of an accident and as such it cannot be said that no other possibility of the death of victim is ruled out. He then submits that the circumstances alleged against the applicant are only in the nature of the statement of co-accused

and recovery of article, iron rod having blood stain and a pair of slipper. He then submits that other accused, against whom the similar circumstances are alleged in the form of recovery of blood stained apparel, and against one accused in addition to blood stained clothes, recovery of a cell phone is referred to. He submits that these two accused were enlarged on bail. His submission is, the applicant is on a better footing. He further submits that the material against the applicant, namely a pair of slipper, is of no consequence and the iron rod having some blood stains. At this stage, it is not sufficient enough for establishing any material against the applicant as the C.A. Report is awaited. He further submits that the applicant surrendered himself and is behind the bars since 15th of June, 2014. It is the submission of the learned Counsel for the applicant that with such insufficient and weak circumstances, there is hardly any chance of the prosecution establishing its case against the applicant. He then submits that the applicant is also entitled to claim parity in view of other accused, which are enlarged on bail, as the present applicant stands on better footing than those other accused.

Mr. S.M. Ghodeswar, the learned A.P.P. opposes the application. The learned A.P.P. submits that the material in the form of statement of wife of the victim shows that a farce was created and each of the accused played his role, and cumulative effect was the elimination of the victim. He submits that the

applicant was having grudge over property against the victim and was the string puller. He submits that though a show was made to create a picture of a vehicle accident, the material collected by the investigating agency shows that the vehicle was in good and running condition. He submits that the applicant my not be enlarged on bail.

On perusal of the material, I find that the material against the applicant is in the nature of circumstances, as rightly pointed by the learned Counsel for the applicant. The reply filed by the State also refers to the statement of the co-accused, the extra judicial confession of the applicant and the recovery of iron rod at the instance of the applicant. This material is certainly only in the form of circumstances. Even considering the material that there was some recovery of an incriminating article against the applicant, the applicant can be placed at parity with those other accused against whom the recovery of the blood stained clothes was made, were enlarged on bail. The material is collected by the investigating agency and the charge-sheet is filed. There is nothing on record to show that the applicant is having any criminal antecedents.

Considering all these aspects, in my opinion, the learned Counsel for the applicant has made out a case. The apprehension of the State can be taken care of by imposing certain conditions.

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 solvent sureties in the like amount on the following conditions.

- i. The applicant to attend Amgaon Police Station, District Gondia on every second and forth 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 Amgaon 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 are the observations of the Court while deciding the present bail application and the learned

Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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