

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

Criminal Application [BA] No.103 of 2015

(Sanjay Motiram Panchbuddhe and others

vs.

The State of Maharashtra, through P.S.O. Tumsar, District Bhandara)

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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

Mr. K.S. Motwani, Advocate for the Applicants.

Mr. R.S. Nayak, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 17, 2015.

Heard.

The applicants are before this Court seeking their enlargement on bail in connection with Crime No.56/2014, registered at Police Station Tumsar, District Bhandara for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

The learned Counsel for the applicants invited my attention to the report lodged at the instance of the Assistnat Police Inspector Shri Ashok Kumar Tiwari of Police Station Tumsar. The submission of the learned Counsel is, the house was broke open and seven bone pieces along with human hairs were recovered from the house by digging pit. He submits that only on the suspicion raised by some villagers, the applicants were arrested on 22/05/2014 and since then the applicants are

behind the bars. It is the submission of the learned Counsel that the case against the applicants is not even on circumstances but purely on the gossip of the villagers. The learned Counsel submits that the investigating agency collected the material in the process of investigation. He submits that the bones recovered from the spot were forwarded for scientific analysis, and the Department of Anatomy opined that these pieces were of human being. The department was unable to give any opinion about the sex of the human being. The opinion further refers that the approximate age of the deceased is above 18 years and the approximate time for maceration after human dead body is buried in soil is three months to one year. The learned Counsel for the applicants submits that this material itself is insufficient to establish the definite opinion of the sex of the deceased. He submits that only on some statements of villagers that one Kashiram, resident of village was addicted to liquor and it was an usual talks in the village that Kashiram and his wife having quarrels all the time, the learned Counsel submits that most of the statements reflecting the same story and the applicant no.3 i.e. wife of deceased-Kashiram left the village on account of the quarrels between the couple. His submission is, on such insufficient and scanty material, the prosecution may hardly establish any case against the applicants and keeping the applicants behind the bars for further period

would be a pre-trial conviction to them. The learned Counsel further submits that the applicant no.1 is the brother and applicant no.2, who is prosecuting his studies, is the son of applicant no.3. Thus, the learned Counsel prays for enlargement of the applicants on bail.

The learned A.P.P. vehemently opposes the application. The learned A.P.P. by inviting my attention to the reply filed by the State submits that the investigating agency recorded various statements of the villagers. He submits that when these villagers made an inquiry with applicant no.3 about her husband, she had shown ignorance. He further submits that the investigating agency recorded the statements of the accused and some bone pieces were recovered at the instance of the applicant no.1-Sanjay, and spade and tikas were seized at the instance of applicant no.3. The learned A.P.P. submits that the bones were forwarded for the scientific assessment and the DNA report is awaited. The learned A.P.P. made available the material collected by the investigating agency concluding in filing of the charge-sheet.

I have gone through the material. The learned Counsel for the applicants has rightly submitted that the report itself was raising suspicion over the death of an unknown person by commission of murder by an unknown person. The reading of report makes interesting. It is stated that the villagers

approached the police station and submitted that one Kashiram is not available in the village for a period of 1½ years. There is a talk in the village that by committing murder of Kashiram, somebody buried the dead body in his own house. His wife along with children left the village and is residing at another village-Khairlanji. On receiving that information, the police authority approached the house. They found the house was locked. When the applicant no.2, son of Kashiram was approached by making a phone call, it was informed that he is out of station and he permitted to break open the lock. In presence of panchas, the lock of the house was broke open. The floor of the room was found recently covered after digging. The place was then found having the pits there and in the further process of digging the pits, seven bones were found along with bunch of gray hairs. The investigating agency recorded the statement of the villagers. Most of the villagers gives story of discord between applicant no.3 and her husband-Kashiram and the inquiry made to the applicant no.3 by villagers, to which the applicant no.3 replied that she is not aware about the whereabouts of her husband. The report of the Department of Anatomy, Government Medical College, Nagpur is already referred to. The perusal of one of the statement of one Shivprasad, the Chairman of Tanta Mukti Samiti, reveals that Kashiram was addicted to liquor and was suspecting the chastity

of her wife. The Tanta Mukti Samiti made an attempt to resolve the dispute between the couple. This Shivprasad states that since a year, Kashiram was not available in the village and the applicant no.3 also left the village along with her children. He further states that the boys, who used to play near the house, and the cowboy, who used to graze the cattle near around the house, were gossiping that there is a pit in the house. Accordingly, Shivprasad, the Sarpanch of the village and some other villagers entered in the house and found the mat rolled over the floor. Suspicion was raised in the mind of the villagers and they thought of informing the mother of Kashiram. One Suresh, who was more curious, removed the mat and found a pit. He accordingly, informed the Sarpanch and the Sarpanch in turn gave information to the police authority.

Thus, considering the statement of Shivprasad and other witnesses, there is a considerable merit in the submission of the learned Counsel for the applicants that it was the talk of the town and gossiping in the village led to ask the police authority to reach the spot. The material referred to above is in bits and pieces. The learned Counsel for the applicant was justified in submitting that this material is not sufficient enough to connect the applicants in a definitive way in commission of crime. The scientific material is not giving the opinion, whether the deceased was a male or female. The D.N.A. report

is still awaited.

Considering all these aspects, there is a merit in the submission of the learned Counsel for the applicants that on the backdrop of this material, it will not be appropriate to detain the applicants for further period and deprive their liberty. The apprehension of the State can be taken care of by imposing conditions on these applicants.

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

- i. The applicant to attend Tumsar Police Station, District Bhandara on every second and forth Sunday of the month from 09:00 a.m. to 12:00 noon and maintain diary of their attendance duly countersigned by the Police Station Officer or the Investigating Officer till commencement of the trial.
- ii. The applicants shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicants to submit their residential addresses 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 Tlumsar Police Station, they shall take permission and inform the concerned Police Station about their visit to other place.

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

Needless to say that these observations of the Court are only for considering the prayer of the applicants for their enlargement on bail. The learned Sessions Judge to proceed with the trial on its own merit without being influenced by these observations.

The application is disposed of as such.

JUDGE

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