

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

**CRIMINAL APPLICATION (BA) NO.113 OF 2015
ASHUTOSH S/O GAJANAN WANKAR (IN JAIL)**

V/S

**THE STATE OF MAHARASHTRA, THR. P.S.O. P.S. BELA, NAGPUR
with**

CRIMINAL APPLICATION (BA) NO.27 OF 2015

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

Court's or Judge's order

**Shri R.M. Daga, counsel for the applicant.
Shri M.J. Khan, APP for the State.**

**CORAM : PRASANNA B. VARALE, J.
DATE : MARCH 12, 2015**

Heard Shri R.M. Daga, learned counsel for the applicant and Shri M.J. Khan, learned A.P.P. for the non-applicant/State.

By the present application, the applicant is before this Court seeking his enlargement on bail in connection with Crime No.41 of 2014, registered with Police Station Bela, Tahsil Umrer, District Nagpur (Rural), for the offences punishable under Sections 302, 201, 120-B, 143, and 404 of the Indian Penal Code.

The case against the applicant reflected from the papers placed on record, can be summarized, thus :

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The report was lodged at the instance of one Shri Sunil Kawaduji Desai who was informed by the villagers of finding a dead body of an unknown person in his agricultural field. There were injuries and marks of strangulation over the dead body. The body was found with apparel i.e. Banian and Under Garments. In the investigation it was revealed that, a day earlier to this report, a missing report was lodged by one Priyanka Sanjay Mahajan on 18.1.2014. It was stated in the report that her husband Sanjay Mahajan left his home at about 03:30 p.m. informing his wife that he is proceeding to his friend's house namely Ashutosh Wankar (applicant). As there was no reply from his cell phone for considerable long period, wife Priyanka approached Police Authorities making request for search of Sanjay.

It is the case of the prosecution that in the process of investigation it was revealed that for hatching conspiracy to eliminate the victim for giving effect to the plan, the other accused were hired. A vehicle was also arranged. It is the case of the prosecution that the accused persons committed murder of the victim in the vehicle by strangulation and threw the body in the field.

Shri R.M. Daga, learned counsel for the

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applicant, submits that the material collected by the investigating agency is only in the form of circumstances alleged against the applicant. He further submits that one of the accused Raju Devidas Dhupe was before this Court by presenting Criminal Application (BA) No.27 of 2015 seeking his enlargement on bail. This Court had an occasion to consider the material and found that the material collected by the investigating agency is only in the form of statement of accused and missing report at the instance of wife of the deceased. Learned counsel submits that the material against the applicant is also a weak material and it is only raising suspicion over the applicant and the suspicion is ill-founded. Learned counsel for the applicant submits that the applicant is arrested on 27.8.2014 and since then he is behind the bars.

Learned counsel for the applicant submits that as the investigation is complete, charge-sheet is also filed, on the backdrop of the weak material against the applicant, the applicant may not be treated for further period in the custody.

Per contra, learned APP opposes the application. Learned APP fairly submits that the

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material against the applicant is mostly in the form of circumstances and there is no direct evidence against the applicant. Learned APP submits that initially the report was lodged at the instance of the wife of the victim about his missing and in the supplementary statement recorded by the investigating agency, the wife of the victim gives certain details. Learned APP submits that the CCTV footage was also collected by the investigating agency from the restaurant / liquor bar. In the said CCTV footage, the applicant and other accused were found consuming liquor. On considering the material referred by learned counsel for the applicant as well as learned APP, learned counsel for the applicant was justified in submitting that the material is only in the form of circumstances.

Learned APP made available the statement of the wife for my perusal. Though in the statement the wife gives a detailed version, it refers to a part of transaction between the applicant and the victim. The statement refers that the transaction was completed and the victim accepted the amount for sell of part of the property to the applicant. In the statement, it is not the case that there was any amount due and payable to the applicant but the statement shows

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that the applicant wanted to develop the part of the property as per his will and wish. Thus, this material is not sufficient to lead to the conclusion that this transaction between the applicant and the victim was of such a nature. Thus, the statement reveals that the applicant wanted to develop the part of the property. The other material i.e. CCTV footage of the restaurant does not show any proximity on the backdrop of the event such as the victim leaving his home and immediately thereafter either joined the accused for consuming of liquor or the accused were waiting for an opportune time to eliminate the victim.

Considering these aspects, in my opinion, there is merit in the submissions of learned counsel for the applicant that this material by itself is not sufficient enough to detain the applicant in custody for indefinite period. The apprehension of the State can be taken care of by imposing conditions on the applicant.

The learned Counsel for the applicant has made out a case for enlargement of the applicant on bail.

In the result, the application is allowed. The

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applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety in the like amount on the following conditions :

i) The applicant to attend Police Station Bela, Tahsil Umrer, District Nagpur (Rural) 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, till conclusion 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.

iv) In case the applicant is moving out of the area of Nagpur City Police Station, he shall take permission and inform the concerned Police Station

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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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