

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

Criminal Application (BA) No. 393 of 2015

(Kiran Dattuji Ghormade Vs. State of Mah. through P.S.O., Morshi, Distt.
Amravati)

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

Court's or Judge's order

Shri P. V. Navlani, Advocate for applicant
Mrs. S. S. Jachak, APP for the State/non-applicant

CORAM : P. B. VARALE, J.

DATE : 24-7-2015.

Heard learned counsel Shri Navlani for the applicant and learned APP Mrs. Jachak for the State.

By the present application, the applicant is seeking his enlargement on bail in connection with Crime No. 29/2015 registered at Police Station, Morshi, District Amravati for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

The investigating agency was set in motion in view of the report lodged at the instance of one Vijay Somwanshi, uncle of deceased. The sum and substance of the report is that deceased Vinod @ Golu was plying four wheeler popularly known as kali-piwali as commercial passenger vehicle. It was the usual practice of Vinod @ Golu to ply the vehicle on Morshi-Warud-Morshi track and returning back to his place i.e. Morshi. On 27-1-2015, Vinod @ Golu left his house with his vehicle, as he did not return back in the evening, the family members thought

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that he might have left for some outstation in connection of hiring the vehicle by the passengers. On 29-1-2015, an information was received to Vijay Somwanshi through Police Head Constable Udupure attached to Morshi Police Station that dead body of Vinod @ Golu is lying beside the Manimpur - Dhanora Road. Vijay immediately rushed there and he identified the dead body of his nephew. After conducting the post mortem, when the dead body was carried to General Hospital, Morshi, one Chandrashekhar Ghode, who had acquaintance with Vijay Somwanshi informed that Golu was enjoying liquor at about 7.00 p.m. on 27-1-2015 along with the present applicant and other accused Deepak Phuke. When Chandrashekhar made enquiry with Golu about his returning to Morshi, he informed that due to the accident of the vehicle, it will require some time for him to return to Morshi. Chandrashekhar was then informed by Vijay Zoting, cleaner, who was occasionally employed by Vinod @ Golu on his vehicle that Golu was carrying amount of Rs. 10,000/-. Vijay Somwanshi then expressed his suspicion in the report that the present applicant and the other accused on account of some quarrel might have committed murder of Golu. The investigating agency recorded various statements of the witnesses. The report of the post mortem conducted by the Medical Officer was collected by the investigating agency.

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Learned counsel Shri Navlani for the applicant submitted that assuming the material as it is collected by the investigating agency though not admitting the same, the material only revolves around the circumstantial evidence against the present applicant that too very weak evidence, namely, the last seen theory. Shri Navlani in detail submission by inviting my attention to the statements of various persons, such as the liquor vendor lady, cleaner Vijay and other witnesses of last seen theory submitted that even though these witnesses state that deceased enjoyed liquor in company of the accused, not a single witness states that while leaving the place, the deceased and the accused persons quarreled with each other or abuses etc. were given. The submission of Shri Navlani is on the backdrop of these statements of the witnesses. The prosecution story that a quarrel took place between the deceased and the accused on account of liquor and committed murder of deceased is a far-fetched and unbelievable story.

Shri Navlani then invited my attention to the report firstly by the uncle of deceased Vinod @ Golu on receiving information on finding dead body through police personnel. He submits that in the report, uncle of Vinod @ Golu, Vijay Somwanshi specifically states that on 27-1-2015, he had seen Vinod leaving Morshi in the morning. Then by referring to post mortem report, Shri Navlani submits that the story of prosecution that on 27-1-2015,

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deceased was in company with the accused persons and enjoyed liquor, thereafter, the quarrel took place between accused and the deceased and accused committed murder of the deceased is wholly falsified considering the time gap reflected in the post mortem report. Shri Navlani then submitted that on the very material, other accused was enlarged on bail by the learned Sessions Judge. Whereas the learned Sessions Judge by observing that the present applicant failed to give any satisfactory explanation, rejected his application. Shri Navlani submitted that the failure of explanation at the instance of the applicant cannot be a ground to reject the application when the learned Sessions Judge on the similar set of circumstances against the other accused allowed the application.

Learned APP vehemently opposes the application.

Considering the material, namely, the statements of the witnesses, post mortem report and the order passed by the learned Sessions Judge allowing the application of the co-accused on similar set of circumstances, in my opinion, the learned counsel for the applicant has made out the case. There cannot be any dispute that the present applicant and the other accused are standing on equal footings insofar as material is concerned. Learned counsel for the applicant was justified in submitting that the material in the nature of last seen theory that too leaving a liquor shop by the accused

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and the deceased in a normal condition that too without having any quarrel or heated exchange of words etc. and without having any evidence that there was either quarrel between the deceased and the accused persons or even for that matter heated exchange of words is a weak piece of evidence. The applicant is behind bars for more than six months. Shri Navlani, learned counsel submits that applicant is working as Labour and only the bread winner of his family. He further submits that there is no material of any criminal antecedent to his credit. In view of the aforesaid, learned counsel has made out the case. The apprehension of the State can be taken care of by imposing certain conditions on the applicant. In the result, the application is allowed.

The applicant be released on bail on furnishing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount, on the following conditions.

a] The applicant to cooperate with the investigating agency and to attend the Morshi Police Station, District Amravati on every 2nd and 4th Sunday between 9.00 a.m. to 12.00 noon and to maintain diary of his attendance till commencement of the trial.

b] The applicant shall not tamper with the prosecution evidence nor commit any act such as

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contacting the prosecution witnesses or pressurize them.

c] The applicant to submit his residential address and his contact numbers such as phone/mobile numbers to the investigating agency.

d] In case the applicant is moving out of the area of Police Station, Morshi, he shall inform the concerned Police Station about his visit to other place.

In case of breach of these conditions, the prosecution agency to take necessary steps in accordance with the provisions of law.

JUDGE

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