

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

Criminal Application [BA] No.763 of 2014

(Ashish @ Dadu s/o Atul Deotale

vs.

The State of Maharashtra, through P.S.O., Bramhapuri, District Chandrapur)

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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 : JANUARY 14, 2015.

Heard Mr. S.V. Sirpurkar, the learned Counsel for the applicant and Mr. D.B. Patel, 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.134/2013, registered at Bramhapuri Police Station, District Chandrapur for the offences punishable under Sections 302 and 452 of the Indian Penal Code.

The learned Counsel for the applicant vehemently submits that only on the suspicion, the applicant is implicated in a false crime and the material collected by the investigating agency is wholly insufficient to connect the applicant with the commission of crime. The learned Counsel, by inviting my attention to the report lodged at the instance of one Shrikant Bhagadkar, the son of deceased Mahadeo, submits that it is

alleged in the report that three days prior to the incident, the applicant gave threat to the father of the complainant. He submits that on 13/10/2013, it is alleged that the complainant and other family members attended a religious procession. The father of the complainant accompanied them for a short period and returned back to home. At about 06:30 p.m., when the other family members returned to home, found people gathered in front of their house and on entering in the house, the mother of the complainant found dead body of his father lying in the kitchen. The complainant entered in the kitchen and found his father lying in the pool of blood and an axe was lying near the staircase. There was a scarp lying on the spot. The complainant expressed his suspicion over the applicant on account of the father, alleged by the applicant, indulged in act of witchcraft i.e. black magic. The learned Counsel for the applicant submits that in the process of investigation, the investigating agency though recorded various statements, the only material against the applicant is in the form of a vague statement of the witness that the scarp, which was lying on the spot, was snatched by the applicant and the other circumstance namely the bloodstained clothes seized from the house of the applicant. He then submits that the statement in respect of scarp is too inconsequential for the reason that a vague statement was made at about 02:30 p.m. that the applicant came near to the tractor of this witness and

snatched the scrap. It is further submitted that in the report, the complainant himself states that the applicant was in the procession occupying a place over a sound box kept in a vehicle i.e. tractor and gave signal to the complainant. It is further submitted that on the backdrop of this fact, it is difficult to believe the statement of witness Anand Kuthe that when the complainant found the applicant in the procession, at the same time, the applicant snatched scarp from the witness. Thus, the submission of the learned Counsel for the applicant is, the version of this witness casts doubt on the story of the prosecution. He then submits that the alleged recovery/seizure of the bloodstained apparel of the applicant is also doubtful. His submission is, the alleged recovery of the bloodstained apparel is after a couple of days of the incident that too in a bag hanging in the room. The submission is, such a belated recovery that too from the conspicuous place of the residential house raised doubt in the prosecution case. It is submitted that apart from this material, there is absolutely no material to connect the applicant with the alleged commission of crime. It is further submitted that the applicant was arrested on 14/10/2013 and since then the applicant is behind the bars. The learned Counsel for the applicant, therefore, prays for enlargement of the applicant on bail.

The learned A.P.P. vehemently opposes the application and submits that apart from the material referred by the learned Counsel for the applicant, there is also material collected by the investigating agency in the form of last seen theory. There is a statement recorded by the investigating agency of a witness, who states that at about 4 O'clock on the day of the incident, the applicant was coming out of the house of the complainant. The learned A.P.P., therefore, prays for rejection of the application.

Considering the material collected by the investigating agency, there is a merit in the submission of the learned Counsel for the applicant that the material collected by the investigating agency is only in the form of a statement of witness in respect of a scarp and bloodstained apparel. The material, on which the prosecution placed reliance, can certainly be said as the material in the nature of circumstantial evidence. Though the learned A.P.P. referred to the statement of Dashrath in support of his submission that the applicant was lastly seen coming out of the house of the complainant, this material also casts doubt on the backdrop of the fact that there are two versions on record, one is of the complainant that the applicant was in the procession occupying a place in the vehicle (tractor) making signal to the complainant himself and the other version of the witness, who states that the applicant snatched his scarp

and thereafter left the procession and was not seen. Even this last seen circumstance is not sufficiently enough to establish factum of positive material against the applicant.

Considering all these facts, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail. On the basis of the material and considering the fact that the applicant is behind the bars for more than a year and the investigating is complete and concluded in filing the charge-sheet, no fruitful purpose would be served by keeping the applicant behind the bars for an indefinite period. In the result, the application is thus 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 Bramhapuri Police Station, District Chandrapur, 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 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, in case of change, to the investigating agency.
- iv. In case the applicants are moving out of the area of the Bramhapuri 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

**sdw*