

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1635 OF 2016

Bashir Khan s/o Mahtab Khan,
Age: 75 years, Occu: Nil,
R/o Satara gaon, Patel Galli,
Aurangabad

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Ms U. T. Pathan, Advocate for applicant;
Mr A. R. Kale, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th April, 2016

ORAL ORDER :

Heard.

2. The applicant is seeking his release on regular bail in connection with the Crime No. 101 of 2015 registered with Satara Police Station, Dist. Aurangabad, for offences punishable under Sections 302, 201, 323, 504 and 177 read with Section 34 of the Indian Penal Code for the incident alleged to have taken place on 17th May, 2015.

3. It is claimed by the prosecution that deceased Hamsherabi was the daughter of the present applicant, whose conduct was suspected by him father and her brother, because she though was married twice, was not residing with her husband and was wandering here and there. It is claimed

(2)

that the present applicant strangled her with the help of the co-accused, who happened to be applicant's son and brother of deceased.

4. While trying to make out a case for grant of regular bail, learned Counsel appearing on behalf of the applicant would submit that the investigation in the matter is completed and chargesheet is already filed. The age of the present applicant is about 70 years and he is suffering from various ailments.

5. The next submission of the learned Counsel appearing on behalf of the applicant is that the entire case of the prosecution is based on circumstantial evidence and there is hardly any direct material on record to connect the present applicant with the crime in question, but for statement of one Chandkha Bashirkha, son of the present applicant recorded by the Magistrate under Section 164 of the Code of Criminal Procedure.

6. The submission is made that the co-accused, namely Kadir Khan Bashir Khan is already released by this Court on regular bail, in view of the fact that the case is based on the circumstantial evidence.

7. Learned Additional Public Prosecutor opposed the application on the ground that even though the case is based on circumstantial evidence, there is direct material on record to connect the present applicant with the crime in question. Learned Additional Public Prosecutor has relied upon the statement of witness Chandkha, recorded under Section 164 of the

(3)

Code of Criminal Procedure, wherein it was disclosed by the present accused that he has killed deceased Hamsherabi.

8. Learned Additional Public Prosecutor then submits that this Court has already expedited the trial and as such, application be rejected.

9. With the assistance of the respective parties, I have perused the entire investigation papers. It is not disputed that, it could be inferred from the investigation papers that the entire case is based on the circumstantial evidence. The statement of the witness Chandkha, recorded under Section 164 of the Code of Criminal Procedure, in my opinion, to what extent pin points involvement of present applicant-accused is an issue, which can be gone into at the stage of the trial. The circumstances as are brought on record to connect the applicant with the crime in question, prima faice, in my opinion, are not sufficient to detain present applicant any more, particularly having regard to the fact that the co-accused Kadir is already released on bail.

10. It is then required to be noted that the applicant is father of the deceased, aged about 70 years and is suffering from various ailments and there are no criminal antecedents against him. As such, present applicant is entitled for release on bail. Hence, I pass following order:-

Applicant Bashir Khan s/o Mahtab Khan, be released on bail, in connection with Crime No. 101 of 2015, registered with Satara Police

(4)

Station, Dist. Aurangabad, for the offences punishable under Sections 302, 201, 323, 504 and 177 read with Section 34 of the Indian Penal Code, upon furnishing P.R. Bond of Rs. 25,000/- with one surety, in the like amount. The applicant shall not tamper with the prosecution evidence.

11. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

sjk