

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

Criminal Application No. 3003 of 2016

District : Latur

Dnyaneshwar s/o. Shivaji Nilewad,
Age : 35 years,
Occupation : Agriculture,
R/o. Anupwadi,
Taluka : Udgir,
District : Latur. .. Applicant.

versus

The State of Maharashtra,
Through Police Station,
Udgir (Rural),
Taluka : Udgir,
District : Latur. .. Respondent.

.....

Mr. V.D. Gunale, Advocate, for the applicant.

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
the respondent.*

*Mr. C.R. Thorat, Advocate, for the original
complainant.*

.....

With

Criminal Application No. 3914 of 2016

District : Latur

Sheetal w/o. Anil Nilewad,
Age : 26 years,
Occupation : Household,
R/o. Anupwadi,
Taluka : Udgir,
District : Latur. .. Applicant.

versus

The State of Maharashtra,
Through Police Station,
Udgir (Gramin),
Taluka : Udgir,
District : Latur.

.. Respondent.

.....

*Mr. Ram S. Shinde Borolkar, Advocate, for the
applicant.*

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
the respondent.*

*Mr. C.R. Thorat, Advocate, for the original
complainant.*

.....

CORAM : A.M. BADAR, J.

DATE : 18TH OCTOBER 2016

ORAL ORDER:

Applicants, who are accused in Crime No. 202/2015 registered with Udgir (Rural) Police Station, Taluka Udgir, District Latur, for offences punishable under Sections 302, 120B, read with Section 34 of the Indian Penal Code, by these applications, are seeking their release on bail after filing of the charge-sheet.

2. Heard learned Counsel appearing for applicants / accused. They argued that the entire case is based on circumstantial evidence. The only

circumstance available with the prosecution is motive and recovery. It was argued that initially report of Accidental Death Case was made wherein nobody was suspected.

3. The learned Addl. Public Prosecutor opposed the application by contending that both applicants were having illicit relations and therefore as husband of applicant Sheetal Nilewad was proven to be hurdle in their illicit liaison, applicants indulged in conspiracy and eliminated Anil - husband of applicant Sheetal Nilewad in the night intervening 14.12.2015 and 15.12.2015 by strangulating him by means of rope.

4. The learned Addl. Public Prosecutor opposed applications by contending that statements of witnesses goes to show motive for committing the offence by applicants. The learned Addl. Public Prosecutor submits that recovery of cellphone and piece of rope used for commission of the crime shows complicity of applicants in the crime in question.

5. Post mortem report shows that Anil Nilewad died homicidal death because of cardio-respiratory failure due to asphyxia due to strangulation. His dead body was having injuries apart from legature marks. Place of his death was in the platform outside his house.

6. On 15.12.2015 itself, Gunwant - father of Anil Nilewad lodged report intimating death of Anil by mentioning that he has no complaint or suspicion about death of Anil. Accordingly Accidental Death No. 74/2015 under Section 174 of the Cr.P.C. was registered. During enquiry of that Accidental Death Case, Nagnath Nilewad - brother of deceased Anil lodged FIR on 16.12.2015. He suspected that deceased Anil must have been done to death by his wife i.e. applicant Sheetal Nilewad and her paramour applicant Dnyaneshwar Nilewad. Prakash Nilewad, Angad Nilewad, Rajendra Nilewad and Laxmibai Nilewad are disclosing illicit relations between both applicants. This, according to the prosecution case, was motive for eliminating Anil.

7. Dead body of Anil Nilewad was firstly noticed by Suryakant Nilewad, who is brother of the deceased. His statement shows that on 15.12.2015, he found his brother Anil sleeping outside the house in front yard and when there was an attempt to wake him up, Suryakant noticed strangulation marks on neck of Anil. If really at wee hours of 15.12.2015, Suryakant had noticed strangulation marks on neck of Anil, then it does not stand to reason that their father would report that they are not having any suspicion on death of Anil.

8. Be that as it may, the other evidence for connecting applicants to the crime in question is recovery of cellphone and a piece of rope at the instance of applicant Dnyaneshwar Nilewad. A piece of rope is an article of daily use in rural areas.

9. Statement of Rajendra Nilewad shows that he only heard some sound emanating from house of Anil in the night of 15.12.2015 at about 02.00 a.m. However, except this, Rajendra Nilewad is not stating anything.

10. It is well settled that in cases based on circumstantial evidence, the prosecution is required to establish entire chain of circumstances leading to sole hypothesis of guilt of the accused and cumulative effect of such proved circumstances must be inconsistent with innocence of accused person. In the case in hand, prima facie it is seen that applicant Sheetal Nilewad was inside the house, whereas the deceased was outside the house during that night. The other evidence is regarding recovery and motive. Except this, the charge-sheet does not reflect any other incriminating circumstance. In the wake of such evidence, further pre-trial detention of applicants is not warranted.

11. It is argued on behalf of the original complainant that some near relatives of applicant

Dnyaneshwar Nilewad had threatened the prosecution witnesses. However, due care of this aspect can be taken by imposing conditions.

12. Hence, I pass the following order :-

(a) Both Applications are allowed.

(b) Applicants / accused, in the above crime, be released on bail on their executing P.R. Bond in the sum of Rs. 30,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(c) As conditions of this order, applicants / accused shall abide by the following directives :-

(i) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against them.

(7)

Cri. Appln. Nos. 3003 & 3914 of 2016

(iii) Applicants shall not repeat commission of similar type of offences in future.

(d) Applications stand disposed of in the above terms.

(A.M. BADAR)
JUDGE

.....

puranik / CRIAPPLN3003.16etc