

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

Criminal Application No. 4479 of 2016

District : Ahmednagar

Swapnil s/o. Ramesh Dhawale,
Age : 19 years,
Occupation : Student,
R/o. Vambori,
Taluka : Rahuri,
District : Ahmednagar
PIN 413 704 (Maharashtra). .. Applicant.

versus

The State of Maharashtra,
At the instance of
M.I.D.C. Police Station,
Ahmednagar,
District : Ahmednagar. .. Respondent.

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Mr. Abhaykumar D. Ostwal, Advocate, for the applicant.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 17TH OCTOBER 2016

ORAL ORDER:

The applicant, young boy of 19 years, is an
accused in Crime No. I-100/2015 registered with
M.I.D.C. Police Station, Ahmednagar, for offences

punishable under Sections 302 and 201 of the Indian Penal Code. By this application, he is praying for releasing him on bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that as per prosecution case itself, motive for commission of the crime is insistence by the deceased on the accused for carnal intercourse against the order of nature on the applicant. My attention is drawn to statements of Santosh Koke, Satish Nikam and Gangubai Nikam on this aspect. The learned Counsel further argued that apart from evidence of recovery of clothes of the applicant as well as a tiffin and water bag allegedly of the deceased, there is no evidence to connect the applicant to the crime in question. The learned Counsel further argued that the present application is moved as the trial is being protracted at the behest of the informant though this Court had expedited the trial by an order dated 15.09.2015. Thereafter charge has been framed but the trial could not proceed an inch ahead because of obstruction created by the informant. The learned Counsel also relied on judgment of the Hon'ble Apex Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 Supreme Court Cases 40]** and particularly para 19 thereof for pointing out that framing of the charge amount to change in circumstance.

3. The learned Addl. Public Prosecutor opposed the application by contending that though the case is based on circumstantial evidence, there is recovery of tiffin and water bag of the deceased from house of the present applicant on the basis of confessional statement of the applicant. The learned Addl. Public Prosecutor argued that recovered clothes of the applicant were found to be stained with blood.

4. I have carefully considered the rival submissions. This is second bail application of the applicant. Perusal of the charge-sheet and particularly Column No.10 thereof shows that the present applicant is 19 years old. His first bail application bearing Criminal Application No. 4799 of 2015 was withdrawn and at that time, as seen from the order annexed at page 54 of the record, this Court considering age of the accused as well as the fact that he is a student, had directed the Sessions Judge to expedite the trial. The order does not show that arguments were advanced and thereafter the said application for bail was withdrawn. Be that as it may, according to the learned Counsel for the applicant, despite this order, the trial has not proceeded an inch ahead.

5. It is needless to state that expeditious trial is valuable right of the accused and in this

case, there is judicial order of this Court expediting the trial. The learned Counsel for the applicant has placed on record, Roznama of Sessions Case No. 214/2015 registered against the present applicant in pursuant to filing of the charge-sheet in this case. Perusal of the Roznama as well as copies of several applications placed on record by the present applicant reflects the following position:-

(a) On 01.10.2015, charges against the present applicant were framed by the learned Addl. Sessions Judge. Thereafter as on 20.10.2016, there were about 36 adjournments in the said Sessions Trial. As the charge is framed by the learned Addl. Sessions Judge as per mandate of Section 309 of the Cr.P.C., it was necessary for the trial Court to adjourn the matter, if it is necessary, by recording reason for such adjournment. Such reasons are required to be reasonable.

(b) Perusal of the Roznama of the Sessions Case as well as copies of several applications moved by the prosecution or the informant shows that on 19.12.2015, an adjournment was sought by the Informant for approaching this Court for getting orders regarding Narco Analysis Test of the accused. This was done by filing an application at Exhibit 12. Then on 29.12.2015 by moving application at Exhibit

16, the Informant prayed for staying the proceedings of the trial. After few adjournments, on 11.01.2016, the learned trial Court rejected that application at Exhibit 16. Thereafter on 22.01.2016, application at Exhibit 23 came to be filed by the Informant with a prayer for staying the trial. Then on 17.02.2016, application at Exhibit 26 was moved by the Informant with a request for adjourning the matter by four weeks. On 02.04.2016, by filing an application at Exhibit 29, the Informant sought for adjournment of the trial. On 29.04.2016, the Informant again filed an application at Exhibit 30 with a prayer for stay of the trial. It is also seen from perusal of Roznama that on several dates, the applicant / accused was not produced before the Court from the jail.

(c) It is also seen from perusal of Roznama that out of these 36 dates, most of the dates were given as '*formal dates*', meaning thereby that on that day, no effective hearing was to take place. It is worthwhile to note that on 28.10.2015, list of witnesses was filed in the Sessions Case. In other words, though the cognizance was taken and the charge was framed on 01.10.2015, till six months, not a single witness is examined in the Sessions Case. Perusal of the Roznama of the trial Court does not show that even on one occasion witness summonses were issued to the prosecution witnesses. I therefore find

much substance in the contention of the learned Counsel for the applicant that the trial is being protracted indefinitely at the instance of the informant. My attention is also drawn to various proceedings filed before this Court at the behest of the Informant, either for transfer of investigation to the CID or further investigation in the matter despite filing of the charge-sheet. By drawing my attention to record page 159 i.e. Exhibit 'H', the learned Counsel for the applicant has rightly pointed out that even the Prosecutor appearing before the learned Addl. Sessions Judge has supported the contention of the Informant that further investigation is necessary. This happened after framing the charge. Therefore prima facie it is seen that there is no possibility of commencement of trial in near future and the delay in commencement of the trial is prima facie attributable to the prosecuting party. Therefore after framing of the charge and after noticing the chronology of events which took place resulting in adjournment of the Sessions Case from time to time after expediting it by this Court on 15th September 2015, I am of the opinion that the present application can be validly entertained.

6. Now, let us go to the merits of the case. Both parties are unanimous in stating that the case is based on the circumstantial evidence. It is well settled that when the case is based on circumstantial

evidence, the prosecution is enjoined to establish each and every circumstance firmly and the cumulative effect of such circumstances should unerringly point out guilt of the accused. Such proved circumstances should be inconsistent with every hypothesis of innocence of the accused.

7. The charge-sheet reveals that deceased Satyam s/o. Shantilal Varma was owner of a jewelery shop at Jeur. He was resident of Ahmednagar. On 04.05.2015, deceased Satyam Varma left for attending his jewelery shop and did not return in night. Therefore, his brother i.e. Informant Sundaram Varma undertook search. Motorcycle of the deceased was found parked in front of Hotel Dream at Vambori bifurcation. There were stains of blood on it. Owner of that hotel informed Sundaram Varma that a boy aged about 20 - 22 years parked that motorcycle at about 08.00 p.m. of 04.05.2015. The matter was then reported to Police. When the Informant and Police were undertaking search of Satyam on 04.05.2015, his dead body was found at about 11.00 a.m. beneath a hillock known as Dawal Malik Hillock. The dead body was having injuries on it. It is seen that near the dead body, a blood stained Koyata with broken handle was found. The same came to be seized from the spot.

8. Charge-sheet contains statements of Santosh

Koke, Satish Nikam and Gangubai Nikam. It is seen from these statements that deceased Satyam Varma was having habit of indulging in carnal intercourse against the order of nature with other men. Statement of Santosh Koke shows that on one occasion at his house, Satyam Varma forced himself on the applicant and the applicant refused to accede to his request. Statement of Satish Nikam also shows that similar attempt was made by the deceased on him. This, according to the prosecution case, was motive for eliminating the deceased by the applicant.

9. The evidence against the applicant, as seen from the charge-sheet, is that of recovery of a tiffin and water bag as well as cellphone. The tiffin, water bag and cellphone recovered at the instance of the applicant were identified to be articles of the deceased by widow of the deceased. Apart from this, the learned Addl. Public Prosecutor could not point out any other tangible evidence connecting the applicant to the crime in question.

10. According to the prosecution case, motorcycle of the deceased was parked in front of Hotel Dream by the applicant. However, no identification parade was conducted by putting owner of that hotel as well as one Vasant Adhav as witness in that identification parade. According to the prosecution case, both these witnesses have seen the

boy who had parked the motorcycle in front of the hotel, after the alleged incident.

11. Considering the fact that according to the prosecution case itself, there were homosexual relations of the deceased with the applicant, finding of articles of daily use of the deceased with the applicant, at this stage, cannot be given overbearing importance. Except this there is no other evidence prima facie connecting the applicant to the crime in question.

12. Considering the nature of evidence against the present applicant as well as the fact that there is no possibility of concluding the trial in near future, so also that the applicant is a teen aged boy and a student, his further pre-trial detention with hardened criminals is not justified.

13. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 20,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant /

accused shall abide by the following directives :-

(i) The applicant 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) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

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

(d) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

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