

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5640 OF 2016

Laxman Dagdu Kharat,
Aged 40 years, Occupation – Labour,
R/o – Uncha-Khadak,
Taluka – Akola, Dist.- Ahmednagar .. Applicant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Akole Police Station, Akole,
Taluka – Akole, Dist.- Ahmednagar .. Respondent

Mr. Vinod Y. Bhide, Advocate for the applicant
Mr. A.D. Namde, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.
DATE : 21/12/2016

ORAL ORDER :

Heard.

2. The applicant, who has been arrested on 20/10/2015 in connection with Crime no.I-153 of 2015 registered at Akole Police Station, Tq. - Akole, District - Ahmednagar for the offences punishable under Sections 302, 201 and 363 of the Indian Penal Code and under Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil

and Aghori Practices and Black Magic Act, 2013, seeks his release on bail.

3. As per order dated 16/3/2016 passed in Criminal Application no. 1217 of 2016, the present applicant was granted liberty to move a fresh application if the trial does not conclude within six months. Accordingly, the present application has been moved.

4. As per the report dated 13/10/2015, the informant has stated that his son aged about 5 years had been missing from 3.00 pm on the said day. After taking search as he was not found, a missing report came to be lodged. It appears that thereafter his dead body was found. On that basis, aforesaid crime came to be registered. It is submitted by learned counsel for the applicant that he has been implicated merely on the basis of suspicion. There are no eye witnesses and the entire case of the prosecution is based on circumstantial evidence. It is submitted that as per the statement of one Ganpat Pichad, he was having a doubt on the present applicant that the applicant was

responsible for the disappearance of the son of the informant, as the applicant used to indulge in acts of black-mailing. It is submitted that chargesheet has been duly filed before the Sessions Court on 11/01/2016. Thereafter, though the trial has commenced, the informant was not interested in leading evidence. It is submitted that on 17/8/2016, the informant had sought fresh investigation into the prosecution. It is submitted that though the Public Prosecutor was desirous of conducting the trial, the informant and other witnesses were not co-operating in the trial. It is then submitted that the informant has moved this Court in Criminal Writ Petition no. 1252 of 2016 with a prayer for fresh investigation in the crime and on 6/10/2016, said Writ Petition was disposed of by directing the Superintendent of Police, Ahmednagar, to take a decision on the request of the informant. It is submitted on instructions that the said prayer has been accepted and fresh investigation has been directed. It is then submitted that the Investigating Officer had moved the learned Judicial Magistrate First Class, with a prayer that the brain-mapping test of three witnesses was required to be undertaken. This application came

to be allowed. It is therefore submitted in these facts that the trial is not likely to conclude in the near future and as there is no evidence against the present applicant, he deserves to be released on bail.

5. The application is opposed by learned Additional Public Prosecutor by relying upon the police papers and the chargesheet. It is submitted that the statements recorded indicate involvement of the applicant. Considering the gravity of the offence, the application deserves to be rejected. He does not dispute the applications that have been moved by the informant before the trial Court. He however submits that in case this Court is inclined to allow the application, appropriate conditions be imposed.

6. I have perused the chargesheet and other documents placed on record. Statement of Ganpat Pichad recorded on 19/11/2015 refers to his earlier conversation with the applicant and on that basis, he has expressed a doubt as regards complicity of the applicant. Statements of the mother of the child and other relatives indicate that as the applicant had left

the village when the funeral of said child was going on, they had a doubt on the applicant. There are no eye witnesses as per the prosecution. In the light of this material on record and the fact that applicant has been behind bars for more than 1 year, I find that a strong case has been made out by the applicant.

7. It is to be noted that after filing of the chargesheet, when the trial was fixed for recording evidence, the informant sought adjournments on the ground that fresh investigation was being sought. The say given by the Public Prosecutor indicates willingness to proceed with the trial. Ultimately, after seeking various adjournments, proceedings for fresh investigation were initiated by the informant. The application moved by the Investigating Officer for conducting brain-mapping test of three witnesses has been allowed. It is also informed on instructions that present applicant is also consenting for having his brain-mapping test conducted. It is thus clear that completion of the trial in the near future does not appear to be probable.

8. In view of aforesaid, the following order:-

ORDER

I] The applicant who has been arrested in connection with Crime no.I-153 of 2015 registered with Akole Police Station, Tq. - Akole, Dist. Ahmednagar for the offences punishable under Sections 302, 201 and 363 of the Indian Penal Code and under Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, is directed to be released on bail, upon furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

II] The applicant shall not enter the limits of Akole Tehsil, District - Ahmednagar, till the completion of the trial.

III] He shall however attend the Court of learned Sessions Judge at Sangamner, District - Ahmednagar on 09/01/2017 and thereafter as per directions of the learned Sessions Judge.

IV] He shall co-operate in the completion of the trial.

V] No steps shall be taken to influence the prosecution witnesses.

9. By clarifying that the observations made in this order are only for deciding the bail Application, the same is accordingly allowed and disposed of.

Sd/-

[A.S. CHANDURKAR]
JUDGE

arp/