

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 1187 OF 2016

Nagesh Runza Nikam

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Kuldeep S. Patil, Advocate for the Applicant.

Mr. S. S. Pednekar, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 26th JULY, 2016

P.C. :

1 The applicant/accused in Crime No. I-44 of 2016 for the offences punishable under sections 302, 120-B, 452 of the Indian Penal Code, registered with Chandwad Police Station, Dist. Nashik at the instance of informant-Vatsalabai Nikam, by this application under section 439 of the Criminal Procedure Code, is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. He argued that in this case, based on circumstantial evidence, many links to the chain of the circumstances are missing and the chargesheet reflects attempt on the part of the investigating officer of bolstering the prosecution case and preparing the incorrect document.

3 Learned APP opposed the application by arguing that the crime is serious.

4 With the assistance of the learned counsel for the parties I have perused the chargesheet. According to the prosecution case, the present applicant who is elder brother of Ramdas Nikam (since deceased) had committed murder of said Ramdas by indulging in conspiracy with the co-accused in the intervening night of 11.03.2016 and 12.03.2016. As there are no eye witnesses to the alleged incident, case of the prosecution is resting on the circumstantial evidence.

5 The FIR lodged by the mother of the deceased and that of the present applicant, shows that deceased Ramdas was mentally ill. Because of his insane acts, the present applicant alongwith his family member was required to leave the house shared by the joint family and to take shelter of another house in Sutarkhede Village. Prior to that, they all were residing in the farm house located at Sutarkhede Shivar. It is seen that in the year 2011, deceased - Ramdas had thrown the son of the present applicant in a well. FIR shows that even on 11.03.2016 the deceased had pelted stones on the wife of one Ratan Wagh. The deceased used to sleep in the house for 5 to 6 days continuously and nobody in the village dared to visit that house or to go near him. Ultimately, on 12.03.2016

said Ramdas Nikam found lying dead in his house situated in the village. The informant mother reported that she was also required to leave that house as her son Ramdas Nikam (since deceased) had assaulted her prior to 5 to 6 days of the incident.

6 In order to establish conspiracy, the prosecution has relied on the statement of one Balasaheb Kacharu Gangurde, a grocery shop owner. His statement shows that the present applicant alongwith his friend Yogesh and Manny, who are co-accused in this case, used to sit daily on the platform of his shop and they were very much present on that platform on 11.03.2016 from 7.30 p.m. to 8.30. p.m.. Prima facie, this statement does not lead us anywhere because it was the routine affair.

7 The next piece on the evidence relied upon by the prosecution is the statement of Shivaji Nikam. It shows that in the intervening night of 11.03.2016 and 12.03.2016, he heard sound of motorcycle going towards the farm house of deceased-Ramdas. This witness does not disclose anything about the riders of that motorcycle.

8 Witness Santosh Alinje is owner of Sahara Hotel. He had stated that on 11.03.2016, co-accused Yogesh, Mannya and Sandeep had consumed liquor and they took dinner at his road side eatery. There there is evidence of recovery at the

instance of co-accused Yogesh and Sandeep on 15.03.2016. It is alleged that two iron bars and one iron pipe stained with the blood came to be recovered from them. Statement of witness Salim Haji Mirza, a scrap dealer, shows that it was on 14.03.2016 at about 10 a.m., the police showed him two iron rods, which were given by him to one Nagesh Nikam. It needs to be noted that in fact the iron rods were shown to be recovered on 15.03.2016. This appears to be the entire evidence against the present applicant. This fact is not disputed by the learned APP. Nature of evidence against the accused is important consideration while releasing him on bail.

9 Considering this nature of the evidence against the present applicant for the offence punishable under section 302 of the Indian Penal Code his pre-trial detention is not warranted and, therefore, the following order :

ORDER

- i. The application is allowed.
- ii. The applicant/accused in Crime No. I-44 of 2016 for the offences punishable under sections 302, 120-B, 452 of the Indian Penal Code, registered with Chandwad Police Station, Dist. Nashik, be

released on bail on executing PR Bond in the sum of Rs. 10,000/- and on furnishing solvent surety in the like amount.

- iii. As a condition of this order, the Applicant should co-operate with the trial court in expeditious disposal of the trial.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.
- v. The applicant should not commit any offence of similar nature in future.
- vi. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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