

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

CRIMINAL APPLICATION (BA) NO.805 OF 2016

(Nagesh s/o Pritamlal Borkar ..vs.. The State of Maharashtra, through PSO Kalmana, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.M. Narwade, Advocate for the applicant,
Shri S.D. Sirpurkar, Addl.P.P. for the non-applicant.

CORAM : P.N. DESHMUKH, J.

DATED : 02-12-2016

Heard Shri N.M. Narwade, learned Advocate for applicant and Shri S.D. Sirpurkar, learned Additional Public Prosecutor for non-applicant.

This application is for grant of bail for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code registered vide Crime No.401/2015 against applicant by Police Station Kalmana, Nagpur on 27-10-2015.

It appears to be case of prosecution that in the night intervening 26-10-2015 and 27-10-2015 when the police were on night duty, they received information on wireless about one dead body of male lying in burnt condition near Pardi Nagar No.5. Accordingly members of police team reached the spot and found one dead body having injuries on abdomen, neck and head caused by sharp weapon and partly in burnt condition. The

body was removed for post-mortem after drawing spot panchanama and offence was registered under Sections 302 and 201 of the Indian Penal Code against unknown person.

It appears to be further case of prosecution that during the course of investigation, involvement of applicant is revealed from the statements of Yamuna, wife of deceased and her daughter Anju as well as one Mohd. Hafij.

According to learned Advocate for applicant, there is no direct evidence against applicant and he is arrested only on suspicion as according to the statements of wife and daughter of deceased, he is stated to be last seen with deceased in the night of 26-10-2015. Learned Additional Public Prosecutor has not disputed this fact and has further contended that apart from that statement involvement of applicant is by way of recovery of knives and petrol can at his instance under Section 27 of the Indian Evidence Act from his house.

Having considered the facts as aforesaid, it is found that case of prosecution is based on circumstantial evidence and on the theory of last seen together. However, to establish involvement of applicant, it is necessary to establish by prosecution that applicant was found in the company of deceased immediately prior to

his death and for that purpose on perusal of statement of Yamuna it is revealed that applicant was regularly meeting deceased as they were addicted to liquor and used to stay together after their labour work was complete. On 27-10-2015 at 9.30 p.m. deceased left with applicant, however did not return back through night. On 28-10-2015 at about 2-00 p.m. police arrived in the house of Yamuna and informed her that her husband was murdered. Her statement further revealed that at that time she learnt that on 26-10-2015 her deceased husband had consumed liquor alongwith applicant and one Pravin Patil and thereafter they indulged in quarrel during the course of which applicant and Pravin Patil committed assault on her husband by knives and set him on fire. She has further stated that prior to this incident also there used to be frequent quarrels between deceased and her husband.

Bare perusal of statement of Yamuna thus revealed that she has not disclosed source of her receiving information to the effect that on 26-10-2015 deceased had consumed liquor with applicant and thereafter there was quarrel between them wherein deceased was assaulted by knife, by applicant alongwith one other.

Similarly, from her statement, *prima facie* it is not found that immediately before the death of deceased,

applicant was found in the company of deceased. So also report of PSI, Kalmana also does not disclose as to what time information was received to the officers who were on duty of mobile van on the night intervening 26-10-2015 and 27-10-2015 about lying of one dead body near Pardi Naka, though it reveals that they were on duty as such from 8-00 p.m. till 10-00 a.m. on the day of incident.

Statement of Anju, daughter of deceased is to the effect that on 26-10-2015 police arrived in their house and gave information to her mother that her father was killed by applicant and Pravin Patil and thereafter set him on fire. According to her statement, above information is given to her by police.

Though from statement of Mohd. Hafij he appears to have stated that in the night of 26-10-2016 he has seen applicant in the company of deceased, his statement is silent as to at what time they were seen together.

Considering the nature of evidence in the nature of last seen together against applicant, and limited evidence available as aforesaid, since the charge-sheet is filed, application is liable to be allowed by imposing suitable conditions as per order below.

i) Applicant shall be released on bail on his

executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

ii) On being released on bail, applicant shall mark his presence with Kalmana Police Station, District Nagpur initially for a period of three months on the first day of each such month and thereafter once in three months on the first date of each such month pending trial.

Applicant shall supply proof of residence and shall update the same in the event of change of residence in future.

Application is allowed.

JUDGE