

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

CRIMINAL APPLICATION NO. 2532 OF 2017.

Krishna Narayan Bhosale Applicant

VERSUS

The State of Maharashtra & Others Respondents

■ ■ ■ ■ ■ ■

Mr. N.S.Ghankear, Advocate for applicant
Mr A.P. Bassarkar A.P.P for respondent No.1-State
Mr. S.T.Veer, Advocate for Res.No.2

■ ■ ■ ■ ■ ■

CORAM : V.K. JADHAV, J.

DATE : 16th AUGUST, 2017

■ ■ ■ ■ ■

PER COURT :

This is an application for getting release on bail in connection with Crime bearing No. 148 of 2016, registered at Vajirabad Police Station, District Nanded. The earlier application with similar prayer below Exh.25 in Special (Atrocity) Case No. 45 of 2016 came to be rejected by the learned Additional Sessions Judge (Court No.6), Nanded, dated 24-03-2017.

2] Brief facts, giving rise to the present application are as follows :-

On the basis of the complaint lodged by complainant Datta Rajaram Kandhare dated 11-09-2016, aforesaid crime came to be registered. It has been alleged in the complaint that, on 03-09-2016 father of the complainant namely deceased Rajaram had gone to Nanded for some work. However, thereafter, he was not found. Even on 05-09-2016 the complainant has lodged the missing complaint. It has been further alleged in the complaint that, the complainant had received the information from one Govind Khandare that on 03-09-2016 accused Dnyaneshwar (juvenile in conflict with law) met him near the Wine Mart and disclosed to him that deceased Rajaram, co-accused Krishna Bhosale and he himself would take liquor and therefore he was going to purchase it. It has been further stated in the complaint that, deceased Rajaram was cultivating the land of co-accused Vitthal Bhosale on contract basis, and one day prior to the festival of Panchami, co-accused Krishna Bhosale, who is the nephew of said Vitthal Bhosale had been to the house of the complainant. He stared the sister of the complainant with evil eyes, and therefore, deceased Rajaram had disclosed the same to Vitthal Bhosale. Thus, at the instance of Vitthal Bhosale the present applicant had been to the house of the complainant and on that day sister of the complainant tied Rakhi to his hand. It has been further alleged in the complaint that, by taking such grudge in mind the present applicant with the help of co-accused Dnyaneshwar committed murder of deceased Rajaram. On the basis of these allegations, present

applicant came to be arrested on 13-09-2016 and since then he is in jail.

3] The learned counsel for the applicant submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. The learned counsel submits that, except the evidence in the form of panchnama drawn under section 27 of the Evidence Act, there is no other connecting evidence against the present applicant. The learned counsel submits that, as per the said panchnama, dead body of deceased Rajaram which was totally in decomposed and burnt condition shown to have been recovered at the instance of the present applicant. The learned counsel submits that, though the prosecution case is based upon the motive as shown in the complaint, the prosecution has come up with a different motive. As per the prosecution story itself, the co-accused Vitthal had illicit sexual relation with the mother of the complainant and, as such, at the instance of co-accused Vitthal present applicant and said Dnyaneshwar had committed the murder of deceased Rajaram. The learned counsel submits that said co-accused Vitthal came to be released on regular bail.

4] The learned APP submits that, though the prosecution case rests upon the circumstantial evidence, there is chain of circumstantial evidence and main link of the circumstantial evidence is that, at the instance of the present applicant dead body of deceased

Rajaram was recovered from the place which was within the exclusive knowledge of the present applicant. The learned APP submits that, there is prima facie evidence about homicidal death of deceased Rajaram. As per the provisional cause of death, deceased Rajaram died due to stab injuries to chest and partly burn injuries on his person. The learned APP submits that during the course of investigation, at the instance of the co-accused Dnyaneshwar certain incriminating articles came to be recovered including the petrol can. The learned APP submits that there is strong prima facie case against the applicant. Thus, application for getting release on bail is liable to be rejected.

5] The learned counsel for the Respondent No.2 (original complainant) submits that, dead body of Rajaram was found at the instance of the present applicant. It has been specifically mentioned in the said panchnama drawn under the provision of Section 27 of the Evidence Act, that present applicant has not only shown the place but also inform to the police that dead body was of the deceased Rajaram. The learned counsel submits that, present applicant has given confessional statement during the course of the investigation when the panchnama was prepared. It has been stated by the applicant that, Juvenile accused Dnyaneshwar has murdered the deceased with the help of dagger and thereafter, dead body was burnt by them by pouring petrol on it. The learned counsel submits that,

there is prima facie chain of circumstantial evidence against the present applicant.

6] On perusal of investigation papers, it appears that entire prosecution case rests upon the circumstantial evidence. Though there is prima facie evidence about the homicidal death of the deceased Rajaram, except the panchnama, under section 27 of the Evidence Act drawn at the instance of the present applicant in respect of recovery of dead body of the deceased Rajaram, there is no connecting evidence against the present applicant. During the course of investigation, certain articles like dagger, petrol can shown to have been recovered at the instance of co-accused Dnyaneshwar who is juvenile in conflict with law. However, there is no question of taking him in the custody during the course of the investigation. It is pertinent to note that, those articles shown to have been recovered at his instance. Even though articles shown to have been recovered, there is no further connecting evidence in respect of those articles. It is not revealed during the course of the investigation that the same dagger has been used for causing death of deceased Rajaram so also the petrol can. In a case rests upon circumstantial evidence, the motive plays great role. However, in the instant case, so far as motive is concerned, the prosecution has come up with the different motive. It has been alleged in the complaint that, the present applicant had an evil eye on the daughter of deceased Rajaram, and

therefore, deceased Rajaram had disclosed the same to Vitthal Bhosale. Thus, at the instance of Vitthal Bhosale the present applicant had been to the house of the deceased Rajaram, and on that day daughter of the deceased Rajaram tied Rakhi to his hand. Therefore, applicant had grudge in his mind against deceased Rajaram. On perusal of the investigation papers, most particularly, the statements of wife of the deceased and said daughter Manjusha, it appears that, they have not stated anything about such incident. The prosecution has also come with the another motive that there was illicit sexual relation between the wife of the deceased and co-accused Vitthal and thus at the instance of said Vitthal the present applicant with the help of Dnyaneshwar had committed murder of deceased Rajaram. The said co-accused Vitthal is released on regular bail for want of evidence against him. In view of the above discussion, I am of the considered opinion that the present applicant is also entitled for bail. Hence, I proceed to pass the following order.

ORDER

- I. Application is hereby allowed.
- II. Applicant Krishna Narayan Bhosale be released on bail in connection with crime No. 148 of 2016 registered at Vajirabad Police Station, Dist. Nanded, on his furnishing personal bond of Rs.25,000/- (Rs. Twenty Five Thousand Only) along with one solvent surety of the like amount on the following conditions :-

A) The applicant shall not tamper with the prosecution evidence in any manner and make himself available as and when required by the Investigating Officer for the purpose of investigation.

B) Applicant shall not enter into the village Thugaon, Dist. Nanded for six months or till the trial is over whichever is earlier.

C) Bail before the lower Court.

III. Application accordingly disposed of.

[V.K.JADHAV, J.]

YSK/