

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

CRIMINAL APPLICAITON NO. 5700 of 2017.

PRASHANT S/O PANDURANG WADEWALE

VERSUS.

THE STATE OF MAHARASHTRA AND ANOTHER.

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Advocate for the Applicant : Mr. R.S. Deshmukh.

APP for Respondents/State : Mr. A.D. Namde.

CORAM : V.L. ACHLIYA, J.

DATE : 17th November, 2017

ORAL ORDER:

1. The applicant has moved this application seeking anticipatory bail on apprehension of arrest in connection with crime No. 90/2017 registered at Palam Police Station, District Parbhani, for offences punishable under sections 302, 201, 506, 109 read with section 34 of the Indian Penal Code.

2. Heard learned counsel appearing for the applicant and learned A.P.P. for the State.

3. Mr. Deshmukh, learned counsel for the applicant strenuously contended that if the entire evidence gathered by the prosecution and presented in the form

of charge-sheet is taken into consideration, there is no evidence to prima-facie establish the complicity of the applicant in commission of offence under section 302, 201 of the Indian Penal Code. By referring the first information report lodged by Pandurang Wadewale, the father of the present applicant, it is contended that the law has been set in motion by none else than the father of the applicant-accused. It is contended that as the father of the applicant noticed human skull and burnt pieces of bones lying in his field, he immediately reported the matter to concerned police station. During the course of enquiry it was revealed that deceased Gangadhar, who was found missing, had a quarrel with the owner of the Dhaba, located nearby the village. Deceased was assaulted by the owner of the Dhaba and his two associates on account of petty quarrel. The deceased, who was heavily drunken, after finishing dinner, demanded cigarette. When Dhaba owner asked him to pay money for the same, deceased abused him. Due to this reason Dhaba owner beaten deceased by means of rubber pipe, which leads to certain bleeding injury to mouth of deceased. Thereafter deceased left the Dhaba. No one seen deceased was brought to field of father of applicant. Only on the basis of the statement

of Sahebrao, the employee of the informant, recorded during the course of investigation, the applicant has been made an accused in the case.

4. By referring the statement of co-accused Sahebrao as well as the statement of Dasrao whose name was referred by Sahebrao in his statement, it is contended that, if their statements are taken into consideration, it no way establishes that the applicant has asked Sahebrao to burn the skull and bones found during ploughing field with intention to disappear or to screen the offender from legal punishment. It is further contended that there is no evidence to show that the skull and the pieces of bones found in the field, were of deceased Gangadhar. The report of DNA test reveals that the result of DNA test found to be inconclusive.

5. By referring the affidavit filed by the investigating officer, the learned counsel submits that even as per say of investigating officer, there is no evidence to prima-facie connect the applicant with the commission of the offence under section 302 of the Indian Penal Code. Only for the reason, the skull and the bone pieces were found in the field of the father

of the applicant, the applicant cannot be implicated in the case. It is further contended that, co-accused Sahebrao who is charged with similar allegations already released on bail by the Sessions Court. It is contended that the case of the applicant stands on the same footing.

6. On the other hand the learned APP submits that as per the evidence gathered during the course of investigation, the deceased was found to be assaulted by owner of the Dhaba and his two associates on account of petty quarrel. In that incident deceased sustained certain bleeding injury. He left the Dhaba. Thereafter the deceased was found to be missing. During the course of investigation it was revealed that while harrowing the field, accused Sahebrao found one human skull. He immediately called Devidas (Dasrao) and he shown the same to Dasrao. It was transpired that after some time the applicant came to the field. When the said fact was brought to his notice, he asked to burn the same. Accordingly co-accused Sahebrao burnt that human skull and bones. In this background the learned APP submits that the evidence collected during the course of investigation prima-facie establishes the complicity of applicant in commission of the offence under section

201 of the Indian Penal Code i.e. to destroy or disappear the evidence with an intention to screen the offender from legal punishment. It is submitted that since the date of commission of the offence, the accused was absconding. In order to conduct proper investigation it is necessary to make custodial interrogation of the applicant.

7. On due consideration of the submissions advanced in the light of overall evidence gathered by the prosecution in the form of charge-sheet, I am of the view that prima-facie there is no evidence to establish the complicity of the applicant in commission of the offence under section 302 as well as section 201 of the Indian Penal Code. If we consider the statements of the witnesses to the incident recorded during the course of investigation, none of the witness has stated that the applicant was present at the place where deceased Gangadhar was assaulted. So also there is no evidence to show that after the deceased left the Dhaba in injured condition brought to agricultural field by accused No. 1 to 3 and thereafter caused his murder and then buried in the field of father of applicant. So also there is no prima-facie evidence to show that in order to screen accused No. 1 to 3 from

legal punishment, the applicant has tried to destroy or disappear the evidence and asked Sahebrao to burn the dead body of deceased. If we consider the evidence in its totality, then, at the most, the evidence collected by the prosecution make out that during ploughing in the agricultural field of father of applicant his employee Sahebrao found one human skull with bones in a decomposed state, which was burnt on the say of present applicant. Although the skull and bones were sent for DNA test the result of Analysis show that the result was inconclusive. Thus, there is no evidence to establish that the body of the deceased Gangadhar was buried in the field and same has been tried to be destroyed by the applicant to screen the real offender being legally punished. In this view, the case is made out to entertain the application seeking anticipatory bail filed by the applicant. I am therefore inclined to allow the application.

8. It is clarified that the observations made as above are made for the limited purpose of deciding the application seeking anticipatory bail filed by the applicant and same shall not be treated as the expression of view of this Court as to merit of the case of prosecution against the applicant.

9. In the result, following order is passed.

ORDER

1. Application is allowed.

2. In the event of arrest of the applicant in connection with Crime no. 90/2017 registered with Palam Police Station, District Parbhani for offences punishable under section 302, 201, 506, 109 read with section 34 of the Indian Penal Code, the applicant be released on furnishing bail in the sum of Rs. 40,000/- with one surety in the like amount, on following conditions.

(i) Applicant shall attend the investigating officer on 21.11.2017 at 11 a.m. and onwards as directed by the investigating officer and co-operate the investigation.

(ii) The applicant shall furnish names and addresses of his three close relatives with their phone numbers.

(iii) The applicant shall not indulge into any act amounting to tampering with prosecution witnesses.

10. Criminal application stands disposed of in above terms.

(V.L.ACHLIYA, J.)

mkd/-