

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

CRIMINAL APPLICATION (BA) NO.21 OF 2017

Ashok @ Prakash Prabhakar Raut

..VS..

The State of Maharashtra, through P.S.O. Mangrul Chavhala, District Amravati

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

Court's or Judge's Order

Shri P.V. Navlani, Counsel for the Applicant.

Shri N.B. Jawade, Addl.P.P. for the Non-applicant/State.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 25, 2017.

One of accused, in Crime No.86 of 2016 registered under Sections 302, 452, and 201 of the Indian Penal Code, has sought bail.

Heard learned counsel for the applicant and learned Additional Public Prosecutor for the non-applicant/State.

It is submitted that the case of the prosecution is based on circumstantial evidence and involvement of applicant Ashok is only stated to be from the statements of the eyewitnesses Arun and Rajesh whose statements are recorded after 18 days of the incident and after arrest of applicant on 5.6.2016. It is submitted that even from the statement of alleged

eyewitnesses it cannot be said that applicant along with co-accused entered the house of deceased Shalini where her body was found. Learned counsel has further contended that only evidence against applicant is of recovery of some gold ornaments involved in this crime at his instance, however, has contended that co-accused Archana, who is equally placed with that of present applicant is released by this Court on bail. It is also submitted that co-accused Umakant, who is husband of co-accused Archana, is also released on bail by the Trial Court who is also placed on similar footing and amount of Rs.1.00 lac is recovered at his instance. It is, therefore, prayed that applicant is entitled for bail on parity with that of Umakant and Archana.

Learned Additional Public Prosecution has opposed the application contending that there is direct evidence establishing involvement of applicant as after recording statements of Arun and Rajesh on 28.6.2016 in test of identification parade held they both have identified applicant to be the same person who has entered in the house of deceased on the day of incident. Thus, it is the case of learned Additional Public Prosecutor that as from the statements of Arun and Rajesh and from the memorandum of test identification parade it is established that applicant entered in the house of deceased where her dead body was found, said

circumstance is material to consider involvement of the present applicant in this crime. It is further stated that presence of applicant at the scene of the offence at the time of incident is substantiated from C.D.R. as said document establishes applicant's location, at the house of deceased at the time of incident. Learned Additional Public Prosecutor thus prayed that the application be rejected. Admittedly, case of the prosecution is based on circumstantial evidence and it is found that initially report was lodged on 2.6.2016 by co-accused Dilip who was subsequently made accused in this case as during the course of investigation it reveals that Dilip was involved having illicit relation with Pushpa, wife of co-accused Umakant and, therefore, Dilip along with co-accused to remove hurdle, committed murder of his wife Shalini.

In view of the case of the prosecution as aforesaid, on perusal of charge-sheet, learned Additional Public Prosecution does not dispute the only material available against applicant to be in the form of statements of Arun, Rajesh and of recovery of gold ornaments at his instance and of his being identified by Arun and Rajesh in the identification parade.

In that view of the matter, on perusal of statements of these two witnesses, same establishes that on the day of incident on 2.6.2016 at around 12:00

noon while he was sitting in the auto-rickshaw, he had seen co-accused Umakant, his wife Pushpa and one male and female aged about 30 to 32 and 35 to 40 years respectively hurriedly entering into the house of deceased who after one hour came out of the house. Similar is the statement of Rajesh. From their statements thus at the most what is established is of four persons entering into the house out of whose names of two persons being co-accused Umakant and Pushpa are stated in their statements of which Umakant is already on bail. Considering the case of prosecution thus one male who is referred in statements of these eyewitnesses is stated to be applicant Ashok and one female is stated to be Archana his wife, who is also granted bail by this Court. The role attributed to applicant as well as Archana in statementd as aforesaid is similar, so also from the document it is further revealed that apart from above, applicant's involvement is of recovery of some gold ornaments at his instance from his house concealed in the cupboard. Similar is involvement of co-accused Archana as from the documents it is found that one weapon came to be recovered at her instance from the same cupboard. This Court while considering application for bail of Archana has noted that there are no eyewitnesses in the present case which is based on circumstantial evidence and

from the statement of witnesses applicant is identified to be the person who went inside house of deceased and after some time came out. However, this by itself is not sufficient to even *prima facie* involve applicant in the case and thus granted bail to co-accused Archana.

The case of applicant is at par with the case of Archana so far as identification of applicant as well as statements of alleged eyewitnesses relied by the prosecution are considered, it is material to note that statements of Aruns and Rajesh are recorded on 28.6.2016 that is after 18 days of the incident and also after effecting arrest of applicant on 5.6.2016. It is further material to note that test identification parade is held on 28.6.2016 wherein these eyewitnesses were identified as applicant. At this juncture it is further material to note that in their statements none of these witnesses have given physical description of male and female found entering in the house of deceased except for stating their age to be between 30 to 32 and 35 to 40 years respectively.

Having considered facts as aforesaid, the application is liable to be allowed by imposing conditions, as per order below:

The 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.

While on bail, applicant shall mark his presence with Police Station Officer Mangrul Chavhala, District Amravati on first day of each such month, pending trial and shall not tamper with the prosecution witnesses.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 27/1/2017

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