

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (BA) NO.29 OF 2017.

Sanjay Bansilal Raut

..VS..

State of Mah.thr.PSO,P.S. Kalamna, Nagpur.

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

Mr.P.P.Kotwal, Adv. for the applicant.

Mr.H.R.Dhumale, Adv. for the respondent.

CORAM : P.N. DESHMUKH, J.

DATE : 9th FEBRUARY, 2017.

1. This is an application filed by accused involved in Crime No.420 of 2015 registered at Police Station Kalamna, Nagpur for the offence punishable under Sections 302, 376 and 201 of the Indian Penal Code.

2. Heard learned counsel for the applicant and learned Additional Public Prosecutor for the State.

3. It is submitted that case of prosecution is based on circumstantial evidence, particularly on 'last seen theory', and has submitted that even on considering documents filed with the charge-sheet, no case of deceased having been seen lastly with applicant can be established. It is also contended that though Section 376 of the Indian Penal Code is made applicable in the

present crime, there is absolutely no document to support above fact. It is therefore prayed that the application be allowed.

4. Learned Additional Public Prosecutor opposed the application as per reply and has contended that from the statement of Shivkumar, Manager, theory of last seen is prima facie found established and has thus submitted that the application be rejected.

5. Perused the documents filed along with charge-sheet and the impugned order.

It appears to be the case of prosecution that on the basis of report lodged by Panchabai Hedau, sister of deceased, dated 13th November, 2015, offence is registered. Complainant has stated that on that day at 9.00 a.m. she was informed by some person that one dead body of female was lying near the railway crossing who appears to be like her sister deceased Lally. Complainant accordingly visited the spot and found dead body of one female lying on the spot. She noted that her full-pant was unloosened and pulled down below the stomach. Complainant identified the body to be that of her sister Lally and accordingly lodged her report.

6. Postmortem report reveals that deceased had sustained as many as eleven surface injuries including ligature mark around the neck and head injuries, which are stated to be fatal as she sustained fracture of skull. However, no cause of death is stated by Medical Officer for want of viscera report

which is still not collected.

7. In the background of above facts when case of prosecution of involvement of applicant since found lastly in the company of deceased is considered, learned Additional Public Prosecutor has referred and relied upon the statement of Shivkumar, Manager. On perusal of his statement it is found that on 12th October, 2015 at around 4.30 p.m., deceased had consumed liquor with applicant. The dead body of deceased is found on the following day at 7.45 p.m. Admittedly, this is the only statement in the charge-sheet on the basis of which prosecution case is based on the theory of 'last seen together'.

8. By now, law insofar as theory of 'last seen together' is well established. It is settled principle of law that the Court has to apply the theory of 'last seen together' cautiously and unless there is corroborating and circumstantial evidence that does not by itself necessarily lead to the inference that it was the accused who committed the crime. In the present case though the applicant was lastly seen together with the deceased, there is no corroborating and circumstantial evidence leading to the conclusion that the applicant has committed the murder of deceased.

9. Learned trial Court while rejecting the application for bail appears to have weighted, statements of Pramila, Pravin.

As stated aforesaid, the learned Sessions Court

rejected the application relying upon the statements of Pramila. On bare perusal of statement of Pramila which is recorded after eight days of the incident, no involvement of applicant can be established in any manner, while on perusal of statement of Pravin, prima facie, it is found that his statement, which is recorded after six days, in fact, demolishes the theory of 'last seen' as put forth by prosecution as according to this witness in the night intervening 12th November, 2015 and 13th November, 2015, applicant was in his company at 1.40 a.m. as they had consumed liquor. In that view of the matter, both these statements, in fact, do not support the case of prosecution in any manner. Learned trial Court without considering the above facts, relying upon said statements, rejected the application.

10. One more aspect which needs consideration is with regards to name of applicant, who is Sanjay Raut, however, in all the documents reference is to one accused names as Sanjay Yadav. Learned Additional Public Prosecutor submits that though there is no document to establish that Sanjay Raut and Sanjay Yadav is one and the same person, has submitted that from statement of his brother Ravi Yadav and one Sohanlal Yadav it is established that at their native place persons belonging to 'Yadav' caste are known as 'Raut'. In that view of the matter, without going into this aspect, as prima facie it is found that there is no sufficient evidence to curtail the liberty of the applicant, application is allowed by imposing suitable conditions upon the applicant, as per following order.

Applicant Sanjay Bansilal Raut shall be released on

bail in Crime No.420 of 2015 registered at Police Station Kalamna, Nagpur on his executing P.R. Bond in the sum of Rs.25000/- with one surety in the like amount.

Applicant shall mark his presence with Police Station Kalamna, Nagpur once in three months on the first day of each such month, pending trial.

Applicant shall produce proof of his residence to Investigating Officer, Police Station Kalamna, Nagpur and shall update the same in the event of change of his residence in future.

Application stands disposed of accordingly.

JUDGE

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