

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

CRIMINAL APPLICATION (BA) NO.732/2017

Suraj @ Gondu s/o Bhaiyalal Wasnik ..vs.. State of Maharashtra thr. PSO
P. S. Adyar, Dist. Bhandara

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

Court's or Judge's orders.

Mr. R. M. Daga, Advocate for applicant.
Mr. Gangane, A.P.P. for non applicant.

CORAM : V.M. DESHPANDE, J.
DATED : AUGUST 10, 2017

This is an application filed under Section 439 of the Code of Criminal Procedure seeking the applicant's enlargement on bail. The applicant is arrested on 15.02.2017 in connection with Crime No.20/2017 with Police Station, Adyar for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The FIR is lodged by Ajay Shamkuwar, father of the deceased Sarang. He lodged report on 13.02.2017 stating as that the deceased failed to return to the house till 10 O'clock, therefore, he went to Police Station Lakhni and lodged a missing report. Sarang was searched during night albeit in vain.

The FIR further recites that during the search, one Sachin Bawankule informed that the deceased, the present applicant Suraj @ Gondu and another accused Pravin @ Chotu were seen in having drinking session at

one Om Sai Bar and thereafter they left the place on motorcycle. It is also stated that Sarang used to have drinking sessions with these two persons and used to play gambling with them. Therefore, he thought that in the morning of the next day, his son will return. It is further stated in the FIR that on 13.02.2017 also in the morning since Sarang failed to return therefore again his search was made. That time, an information was received that a dead body is lying at kaccha road on Madgi to Purakbodi. The first informant, on getting such an information visited the place and found that the dead body was of his son Sarang.

After crime was registered, the investigating officer arrested the present applicant and other accused. Statements of various persons are recorded and after completion of the entire investigation, the investigating officer has filed charge-sheet before the Court.

From the charge-sheet it is clear that the entire case of the prosecution is based on circumstantial evidence. By now, the law in respect of the cases solely based on circumstantial evidence is well settled. In the present case, no incriminating article is seized from the present applicant. The post mortem report shows that Sarang has met his death due to head injury.

During the course of the investigation, the investigating officer has recorded statement of one Sachin Bawankule, who has informed that he has seen the deceased in the company of the present applicant.

His statement is dated 14.02.2017. Thus, there is a delay of one day in recording the police statement. Of course, the prosecution will be at liberty to explain the said delay at the time of trial. However, the fact remains that though he informed the first informant that he has seen the deceased in the company of the present applicant on 12.02.2017, as asserted in the FIR, his statement is recorded on 14.02.2017. Therefore, in my view, for consideration of the present application for bail especially when the case is based only on the circumstantial evidence, such a delay is a relevant factor.

Insofar as the statement of other witness Mahesh is concerned, perusal of the said statement shows that his statement was also recorded on 14.02.2017. This prosecution witness runs a mobile centre and on 12.02.2017, as per his statement, at 7 O'clock the deceased and co-accused Pravin @ Chotu had been to his mobile centre. He noticed that both of them were under the influence of liquor.

On a specific query made to the learned A.P.P. regarding criminal antecedents of the present applicant, the learned A.P.P. submitted that the past record of the applicant is clean. However, offences are registered against the co-accused Pravin.

In the backdrop of the aforesaid prosecution case and in view of the fact that investigation is over and the charge-sheet is already filed, further incarceration of the applicant in jail is not required. That leads me to

pass the following order.

ORDER

- (i) Criminal Application No.732/2017 is allowed.
- (ii) The applicant-Suraj @ Gondu s/o Bhaiyalal Wasnik, in connection with Crime No.20/2017 registered with Police Station, Adyar, Dist. Bhandara for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on he executing PR Bond in the sum of Rs.25,000/- with two solvent sureties in the like amount.
- (iii) The applicant shall attend Police Station, Adyar, Dist. Bhandara, twice in a month i.e. on first and the last Monday of every month in between 2.00 p.m. to 6.00 p.m. till culmination of the trial.
- (iv) The applicant shall not tamper with the evidence and also shall not influence the prosecution witnesses.

The application stands disposed of.

JUDGE