

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

CRIMINAL APPLICATION (BA) NO.752/2017

Pankah Bholaram Tiwari .vs. State of Maharashtra thr.PSO P.S.Ajni, Dist. Nagpur

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.
Mrs. K. R. Deshpande, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.
DATED : AUGUST 18, 2017

This is an application by the applicant to get himself released on bail since he is arrested in connection with Crime No. 275/2016.

Heard Mr.Daga, learned counsel for applicant and Mrs. Deshpande, learned A.P.P. for State.

Submission on behalf of the applicant is that this Court had on 31.03.2017 released one accused Vaibhav on bail. He submitted that the charge-sheet is already filed and therefore further custodial presence of the present applicant is not required.

Merely because the charge-sheet is filed that by itself cannot be a ground for the applicant who faces serious accusation to get himself released on bail. Filing of the charge-sheet at the most can be one of the factor while considering the application for bail. However, the said fact has to be considered in the light of the nature of accusation, the role played by the applicant and the gravity of the offence.

A relatively young couple by name Vandana and Atul was missing. Therefore, Gautam Khadatkhar, the brother of Vandana lodged a report with Police Station, Ajni on 02.08.2016. In the said report, it was stated that the house in which the said couple was staying was purchased by one Kiran Mahalle and he was insisting on the said couple that they should vacate the house. It was also stated in the FIR that the said Kiran Mahalle must have kidnapped the couple. On the basis of the report, an offence punishable under Section 363 was registered. After the law was set into motion, the investigation was done by the investigating officer and that ultimately culminated into arrest of one Mahesh Ballahariya and others. The said Mahesh gave his memorandum statement resulting into discovery of the dead bodies of the said couple. The bodies were sent for post mortem. The post mortem, according to the prosecution shown that there were incised stab wounds on the body of Vandana as well as on the body of Atun in addition to various contusions. As per the post mortem report, the cause of death of Atul was due to cutting his throat whereas the stab injury over the abdomen was the cause of death of Vandana. So also she was found to be throttled before the stab injury.

Needless to mention that an offence under Section 366 was converted into an offence under Section 302, 201 and 120-B of the IPC. According to the prosecution, the present applicant is one of the

conspirators. The submission of the learned counsel is that at the most the applicant can be responsible for causing to disappear the evidence. He submitted that except the statement of one Suresh Khanorkar, there is no other evidence available against the applicant.

I have perused the police statement of said witness which clearly shows that prior to three months of recording of his statement, when he was sitting in his hardware shop, two persons came to his shop and purchased spade and other articles. The investigating officer has also conducted test identification parade. The present applicant is identified by Suresh Khanorkar and it is not at all disputed. That shows that the applicant had been to the hardware shop to purchase various articles. It is to be noted that in his police statement, Suresh has specifically stated as to why he is remembering the applicant and the other accused who were present with him. He has stated that those persons were not looking like labours and the articles which they were purchasing are normally purchased and utilized by the labours. That in my view, can be the reason as to why the said witness remembers the applicant.

The submission on the part of the learned counsel for the applicant that the applicant at the most can be held responsible for causing disappearance of the evidence at this stage cannot be considered since those articles were used in the crime. The case of the present applicant is not at par with the case of Vaibhav who is

released on bail by this Court on 31.03.2017.

It is also the submission of the learned A.P.P. that supplementary charge-sheet is also in offing.

The case is already committed to the Court of Sessions and it is registered as Sessions Case No. 138/2017. An application below Exh.-17 was filed before the Sessions Court, Nagpur and it was rejected. While rejecting the said application it was noticed by the learned Sessions Court that on the basis of the CDR and SDR of the applicant it is seen that he was in touch with the other accused persons.

Looking to the fact that the offence is punishable with death sentence and though there are no eye witnesses prima facie the prosecution has pointed out strong circumstantial evidence against the present applicant.

In that view of the matter, there is no reason to exercise the discretion in favour of the applicant. Hence, the present application is rejected.

JUDGE