

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

CRIMINAL APPLICATION (BA) NO.775 OF 2016

Akash s/o Haridas Damankar

..VS..

State of Maharashtra, through P.S.O., Kuhi Police Station, District Nagpur

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

Court's or Judge's Order

Shri R.K. Tiwari, Counsel for the applicant.

Shri C.A. Lokhande, Addl.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 8, 2017.

This application is filed by one of co-accused involved in Crime No.48 of 2016 registered for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code for bail.

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

It is submitted on behalf of applicant that there is no evidence establishing involvement of applicant as assailant of deceased Monesh Ghodam as report is against unknown persons lodged by Police Patil after he saw a dead body lying by the side of road. It is submitted that applicant came to be arrested on 18.3.2016 on suspicion raised by witnesses, who alleged that in the night on 9.3.2016 they have seen applicant along with co-accused Nana Netam and deceased

together. Thus, it is submitted that only on the basis of such statement, applicant is arrested on alleged theory of last seen together and has prayed that since investigation is complete, application be allowed.

Learned Additional Public Prosecutor opposed the application as per its reply on record and has submitted that there is direct evidence establishing involvement of applicant as immediately prior to death of deceased, he was found in the company of applicant and co-accused. Application is, therefore, prayed to be rejected.

F.I.R. dated 10.3.2016 is by Police Patil vide which he gave information to police of one dead body of a male person lying near nullah in the field of Shri Kokate. Accordingly, police registered offence and investigated the same. During the course of investigation, statement of parents of deceased came to be recorded who had stated that on 9.3.2016, deceased returned back home at around 3:00 o'clock and at 8:30 p.m. again left house, however did not return back and, therefore, on the following day i.e. on 10.3.2016 at around 10:00 a.m. when father of deceased along with his younger brother went in his search, one Bramhadas informed them that in the night on 9.3.2016 at about 9:00 to 9:15 p.m. he has seen deceased in the company of applicant and co-accused Nana Netam who took him on their two wheeler towards Khadshi side. Similar

is the statement of his mother.

Statement of Bramhadas, who from the statement of father of deceased, appears to have given information, as stated by Akshay, father, is recorded on 27.3.2016. On perusal of his statement same also established fact of deceased having been found in the company of applicant and co-accused Nana in the night on 9.3.2016 at 9:30 p.m.. Admittedly, except for statement as aforesaid, there is nothing on record which could establish involvement of applicant nor any incriminating articles are recovered at the instance of applicant.

As per postmortem report, cause of death is crush injury to the head, it is alleged that stone is a weapon of assault in the crime, is seized from the spot.

In view of case of prosecution against applicant of his being in the company of deceased in the night on 9.3.2016 and as according to report lodged by Police Patil since it is found lodged on the following day after 8:00 a.m., there is nothing to establish what took place between 9:30 p.m. on 9.3.2016 till dead body was found on the following day at 8:00 a.m..

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.

In view of facts as aforesaid and available evidence against applicant and as investigation is complete and charge-sheet is filed, application is allowed as per the order below:

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 Kuhi Police Station, District Nagpur once in three months on the first day of each such month, pending Trial.

Applicant shall submit proof of his residence with investigating officer and shall update the same in the event of change in future.

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 :- 9/3/2017