

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 803 OF 2017

(Vinayak S/o Bhagwan Bhaware..vs..The State of Maharashtra, through
PSO.PS.Wadgaon Road, Yavatmal,)

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

Court's or Judge's orders.

Shri A.A.Choube, Advocate for applicant.

Shri V.P.Gangane, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 8, 2017

This is an application under Section 439 of Code of Criminal Procedure, for grant of regular bail.

Heard learned counsel for the applicant and learned A.P.P. for State-non-applicant.

The applicant is arrested on 3/3/2017 in connection with Crime No.214/2017, registered with P.S.Wadgaon Road, Yavatmal for the offence punishable under Sections 302, 201 r/w Section 34 of the Indian Penal Code.

According to prosecution, there was a marital dispute in between deceased Mohan Waghmare and his wife. According to prosecution, the present applicant who is brother of wife of deceased has eliminated deceased with the help of his friend co-accused Datta Fattusing Rathod in view of his sister's marital dispute with the deceased. The learned A.P.P. also submits that at the time of drawing spot panchnama a notice was found to be laying which corroborates the marital dispute in between the couple.

The F.I.R. is lodged by Ganesh Shivram Waghmare, the brother of deceased Mohan Waghmare. It is lodged on 28/2/2017 resulting into the registration of the crime in which the applicant is claiming bail. As per the F.I.R. initially deceased was working as a clerk in Mantralaya, however he was dismissed from service and thereafter he was a R.T.I. activist at Yavatmal. His son Pratik who is engineer in connection with his service stays at Chandrapur, whereas his daughter is taking education at Hyderabad.

The F.I.R. further says that about 20 days prior to lodging of the report deceased made a phone call to first informant and called him to his house where it was disclosed by the deceased that due to the dispute between him and his wife, his wife left her matrimonial place. As per the F.I.R. on 27/2/2017, first informant's sister Smt. Manubai Pathade informed him on telephone that the house of deceased is locked from inside and it emits bad smell. Therefore, the first informant went to the house of deceased and from the slab he noticed his brother laying in dead condition. Therefore, he immediately lodged report. The report was lodged against unknown person. It is specifically stated in the F.I.R. that since the deceased was R.T.I. activist somebody has killed him as he was all alone in the house.

However, on 3/3/2017, altogether differ statement was made by first informant Ganesh before police in which he specifically makes allegations against the applicant that due to his brother's marital dispute the present applicant along with co-accused Dutta has killed deceased.

After arrest of the applicant, during the police custody remand as per the chargesheet the applicant made his disclosure statement which leads to the discovery of weapon knife. The recovery panchnama shows that the weapon is recovered from the water stream(nullah) which is accessible to anybody. The learned A.P.P. submitted that except this recovery there is no other incriminating circumstance against the present applicant. Learned A.P.P. would submit that the muddemal property is already sent to the chemical analyser and the report is still awaited. In my view, the consideration of the present bail application cannot be deferred for the report from chemical analyser. The recovery panchnama shows that the weapon which was recovered from the water stream (nullah) was not having any blood stains. It was having stains of rust, therefore one can visualise what will be the come out of C.A.report.

All other statements those are appended alongwith chargesheet only suggest that there was a dispute between wife of deceased and deceased, except that there is no other material against the present applicant by which one can lead to the conclusion that for the reason of such marital dispute the applicant has committed the offence of murder.

The investigating officer has already filed the chargesheet since the entire investigation is already over. The investigating officer has also recorded the statements of all witnesses, recoveries are already made. Further, there is no possibility of trial being taken in the near future. In view of the nature of the evidence that is collected against the present applicant in my view, further custodial presence of the applicant

is not necessary. Hence, order.

ORDER

- I) The application is allowed.
- II) Applicant Vinayak S/o Bhagwan Bhaware be released on bail in Crime No.214/2017, registered with P.S.Wadgaon Road, Yavatmal for the offence punishable under Sections 302,201 r/w Section 34 of the Indian Penal Code on he executing P.B. of Rs. 25,000/- with two solvent sureties in the like amount.
- III) The applicant shall attend P.S.Wadgaon Road, Yavatmal once in a month preferably on 3rd Tuesday , in between 3.00 p.m. to 5.00 p.m. till culmination of the trial.
- IV) Accordingly, the application is disposed of.

JUDGE