

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

CRIMINAL APPLICATION (BA) NO.1106 OF 2016

Yashwant s/o Zibal Naktode

..VS..

State of Maharashtra, through Police Station Officer, Police Station Desaijanj,
District Gadchiroli

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

Court's or Judge's Order

Shri V.N. Morande, Counsel for the applicant.
Shri A.V. Palshikar, Addl.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.
DATED : MARCH 15, 2017.

This application is filed for bail in Crime
No.47 of 2016 registered for the offences punishable
under Sections 302, 201, 203, and 506-B of the Indian
Penal Code.

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

It is submitted on behalf of applicant that
there is no direct evidence establishing involvement of
applicant in the crime and has contended that though
prosecution has relied upon statement of Subhash
claiming him to be an eyewitness, he is a got up witness
whose statement is recorded belatedly on 17.8.2016 and
claiming to be a witness to incident of assault upon
deceased Archana by applicant, however there is
nothing to establish that said Subhash could witness

incident from his house. It is further contended that statements of Sangita and Mangesh, which are also belatedly recorded, are with regard to alleged extra judicial confession of applicant and has submitted that with this limited evidence available against applicant, application is liable to be allowed as even according to postmortem report, death of deceased is due to Asphyxia and not by injuries alleged to have sustained by her which are found at the time of postmortem report. It is, therefore, submitted that application be allowed by imposing suitable conditions.

Learned Additional Public Prosecutor opposed the application on the lines of reply on record and has contended that statement of Subhash, eyewitness, clearly established involvement of applicant as an assailant of Archana and by referring to statements of Sangita and Mangesh has contended that extra judicial confession made to these witnesses is corroborated by statement of eyewitness and has submitted that application is thus liable to be rejected.

In the background of submissions advanced as aforesaid, it appears that on 12.8.2016 applicant gave information to police of a death of deceased in her field suspecting to be due to snakebite. Based on information received as aforesaid, A.D. was registered and was investigated by head constable Krishna Ghutke. It is noted that during the course of investigation, he

has recorded statements of Subhash, alleged eyewitness, as well as of Mangesh and Sangita on extra judicial confession by applicant and finding involvement of applicant on the basis of their statements, lodged his report on 16.8.2016, on the basis of which present crime is registered and applicant is arrested on 16.8.2016.

In view of facts as aforesaid, perusal of statement of Subhash, who is thirteen years old, reveals that on 12.8.2016 in the evening at 6:00 p.m. when he was on slab of his house, he saw deceased coming from her field while applicant was proceeding towards her and had talked with her and at the same time removed stick which was on cycle and gave one blow on her head and then assaulted by pressing her neck by both of his hands. It is further stated that applicant, thereafter, concealed the body within plantation (Sadaphuli). It is further stated that, thereafter, applicant came to house of Subhash where Mangesh was present and demanded one gunny bag from Sangita, mother of Subhash. It is further stated that, thereafter, he lifted one gunny bag which was lying in the house for cleaning purpose and while all of them were sitting on the nearby bridge said that he has committed murder of wife of Pursha.

Statement of Subhash so far as it relates to alleged extra judicial confession of applicant is found corroborated with statements of Mangesh as well as

Sangita which are dated 17.8.2016 wherein both of these witnesses have stated that while they were sitting on bridge near their house, applicant was with them who had come to ask for gunny bag and on enquiry as to what purpose he required gunny bag, had pointed out by finger towards house of deceased and said that he has committed her murder. Statement of Subhash so far as alleged extra judicial confession is concerned, is about applicant stating to have committed murder of wife of Pursha. Similar is statement of Sangita, however contrary to above contents of statements, Mangesh who also according to prosecution was with Sangita and Subhash has stated as aforesaid that applicant by pointing to the house of deceased said that he had committed her murder.

In view of inconsistencies in statements of these witnesses on the point of exact words alleged to be stated by applicant, evidence relied by prosecution of extra judicial confession, even at this stage does not appear to be convincing to be relied upon, which even otherwise is a weak type of evidence.

If above case of prosecution is kept aside for the purpose of arguments, only evidence which needs consideration is statement of eyewitness Subhash who claims to have witnessed incident in the evening after 6:00 p.m. from slab of his house, however if house of Subhash is really situated at a close distance from the

spot, there has to be a reference of this house in the spot panchanama, however, though there is reference to other houses of deceased herself and of Anandrao Raut, Sitaram Raut, and of reservoir, and field of Tulshiram, there is no whisper of situation of house of Subhash near the spot. This aspect raise reasonable doubt about Subhash witnessing incident as stated by him.

Moreover, on perusal of postmortem report, deceased is found to have sustained abrasions including two multiple abrasions, three lacerated wounds, and one contusion admeasuring 3 c.m. x 2 c.m. on highparietal region, no fracture of skull is detected and probable cause of death is certified to be due to Asphyxia secondary to smothering.

In that view of the matter, it is noted that there is nothing to establish if death is outcome of alleged assault by applicant on head of deceased by stick.

Having considered above stated facts and since investigation is complete, application is liable to be allowed by imposing suitable conditions, as per the order below:

Application is allowed.

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 not enter

within territorial limits of Taluka Wadsa Desaiganj, District Gadchiroli except for marking his presence with this police station on the first day of each month between 4:00 p.m. and 6:00 p.m., pending Trial and shall not make any attempt to tamper with witnesses in any manner.

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

Application stands disposed of accordingly.

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 :- 16/3/2017