

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

CRIMINAL APPLICATION (BA) NO.36/2018

Nanabhau s/o Niloba Kakde

..vs..

State of Mah., thr. PSO, Sindkhed Raja, District Buldhana

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

Court's or Judge's Order

.....
Shri Sunil Bhuyar, Counsel for the applicant.

Shri N.R. Rode, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 29, 2018.

1. Heard learned counsel Shri Sunil Bhuyar for the applicant and learned Additional Public Prosecutor Shri N.R. Rode for the State.

2. The applicant is arrested in connection with Crime No.132/2017 registered with Police Station Sindhakhed Raja, District Buldhana for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. The investigation is over and the charge-sheet is already filed. There is no eyewitness account in the entire prosecution case.

4. The case of the prosecution is based on circumstantial evidence namely last seen theory and also recovery of the weapon at the instance of the applicant.

5. From the statements of Sulochana Sabale and Vitthal, it is crystal clear that the applicant and deceased Manik also consumed liquor separately in the house of Sulochana. In the Sulochana's statement there is nothing to show that the deceased and the applicant along with other co-accused persons proceeded simultaneously from her house.

6. Insofar as statement of Vitthal is concerned, there is 5 days' delay of recording of statement. Recording 161 statement at belated stage assumes importance especially when the prosecution case is based on circumstantial evidence of last seen theory.

7. The FIR is lodged by son of the deceased. From the FIR it is clear that the first informant is not an eyewitness. At the relevant time, he was at Pune.

8. The applicant is arrested on 24.7.2017. In my view, the applicant's presence in custody is not at all necessary. Consequently, I pass the following order:

ORDER

(a) The criminal application is allowed.

(b) Applicant Nanabhau s/o Niloba Kakde, be released on bail on his executing a P.R. Bond in the sum of Rs.25,000/- with two solvent sureties of the like amount in connection with Crime No.132/2017

registered with Police Station Sindhakhed Raja, District Buldhana for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

(c) The applicant shall attend the police station once in a month i.e. on every last Saturday of every month, till culmination of the Trial.

(d) It is made clear that the observations made in this order are purely for deciding the application for grant of bail only and learned Judge of the Court below, who shall be trying the case, shall not get influenced of the observations made in this order.

(e) With this, the criminal application is allowed and disposed of.

JUDGE

!! BRW !!

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