

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

**CRIMINAL APPLICATION (BA) NO.114/2018**

**Kamal s/o Pratap Charawande**

**..VS..**

**State of Mah., thr. PSO PS Ansing, District Washim**

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

Court's or Judge's Order

Shri R.J. Mirza, Counsel for the applicant.

Shri V.A. Thakare, Addl.P.P. for the State.

**CORAM : V.M. DESHPANDE, J.**

**DATED : FEBRUARY 8, 2018.**

1. Heard learned counsel Shri R.J. Mirza for the applicant and learned Additional Public Prosecutor Shri V.A. Thakare for the State.

2. The applicant is arrested in connection with Crime No.136/2017 registered with Police Station Ansing, District Washim 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. Co-accused Medhankar is already released on bail by this Court on 8.1.2018. Against said

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**Medhankar, the circumstance that was appearing in the prosecution case *sans* eyewitness account, the last seen theory.**

**4. This Court, after considering the case of said Medhankar and the material available against him, has released him on bail.**

**5. Against the present applicant, in addition to the last seen theory, other circumstance is pressed into service by the prosecution and that is the extra judicial confession made by the applicant with Smt. Sonu Rathod. According to the statement of Sonu on 16.7.2017 when she and her sister Dipali were searching whereabouts of their brother Santosh, near petrol pump they met the applicant and when they made enquiries about their brother with the applicant, that time the applicant abused Sonu and disclosed that he has killed the deceased.**

**6. Worth to note is that the extra judicial confession was made to Sonu on 16.7.2017. However, she disclosed the said extra judicial confession to the police only on 29.7.2017 that is after the arrest of the present applicant. Since the extra judicial confession by itself is a weak piece of evidence, disclosing the same to the police after a gap of 13 days, assumes importance.**

7. Further, the post-mortem report shows that the cause of death is due to asphyxia due to drowning. Nothing is seized from the present applicant.

8. According to learned Additional Public Prosecutor Shri V.A. Thakare for the State, a cellphone was found in the pocket of the deceased and it was containing a sim-card belonging to the mother of the applicant. In my view, that by itself cannot be the incriminating circumstance in absence of any CDR Reports.

Since the entire case is based on the last seen theory and extra judicial confession against the applicant, since other accused against whom also the last seen theory was pressed into service, was released on bail by this Court, to that extent the case of the applicant is at par and, therefore, to that extent the applicant is entitled to consider his application favourably on the principle of parity.

9. Insofar as the extra judicial confession is concerned, I have already discussed in the preceding paragraphs that it is the extra judicial confession which was made to Sonu was informed by her to the police after the arrest of the applicant.

10. In that view of the matter, I pass the

**following order:**

**ORDER**

- (a) The criminal application is allowed.
- (b) Applicant-Kamal s/o Pratap Charawande, 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.136/2017 registered with Police Station Ansing, District Washim for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.
- (c) The applicant shall not try to influence any of the prosecution witnesses especially Sonu with whom the extra judicial confession is made.
- (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

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**by this observations made in this order.**

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

**JUDGE**

**!! BRW !!**

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