

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

CRIMINAL APPLICATION (BA) NO.454 OF 2018

(Santosh Kumar s/o Madandas Vaishnav ..vs.. The State of Maharashtra, through it PSO, PS Hingana,
Nagpur)

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

Court's or Judge's orders

Shri C.R. Thakur, Counsel for the applicant,
Shri S.S. Doifode, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 27-06-2018

The applicant is arrested on 30-9-2017 in connection with Crime 376/2017 registered at Hingna Police Station, District Nagpur for offence punishable under Section 302 read with Section 34 and Section 120-B of the Indian Penal Code.

2. The deceased is one Vinod Khare. The case of the prosecution appears to be that at Madhura Bar, on the day of the incident, there was an altercation between the deceased and the brother of the applicant Tapes @ Tulshiram. One Javed was present along with the deceased and Tapes. After the altercation, the deceased, Tapes and Javed proceeded towards Hingna. However, at one point in time since Tapes declared his intention to do away with the deceased, Javed got down from the motorcycle. In the interregnum, the present applicant arrived at the spot and asked Javed as to where the deceased and Tapes had gone. It appears from the

statement recorded that the version of Javed is that the applicant told him that he would do away with the deceased Vinod and having said so followed the deceased and Javed.

3. The case against the present applicant is based on circumstantial evidence. The last seen theory, at least at this stage, is of no assistance to the prosecution since there is no material to suggest that the applicant and the deceased were last seen and the death is so proximate in time that no other person or factor could have intervened between such last seen and the death. The other circumstance against the applicant is a joint confession which the two brothers i.e. the complainant and Tapesesh are said to have made to Javed that they have killed the deceased. The only other material is the seizure of blood stained clothes from the applicant.

4. It would not be appropriate to elaborately discuss the evidence and the probative value thereof while considering an application for grant of bail. However, it must be noted that extra judicial confession by its very nature is something which needs to be very strictly proved during the trial and more often than not is considered to be a relatively weak piece of evidence. The last seen theory, which can undoubtedly be invoked in the case of Tapesesh, cannot be so invoked in so far as the present applicant is concerned. It is not in dispute that

there are no criminal antecedents.

5. In the light of the material on record and the fact that there are no criminal antecedents, no purpose would be served by continuing the incarceration of the applicant in judicial custody.

6. The application is allowed.

7. The applicant be released on bail on furnishing personal bond of Rs.15,000/- with one solvent surety of the like amount.

8. The applicant shall not tamper with the evidence nor shall attempt to influence the witnesses.

JUDGE

adgokar