

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

CRIMINAL APPLICATION (BA) NO.532 OF 2018

(Rahul s/o Ramrao Lanjewar ..vs.. State of Maharashtra, through PSO, PS Wadi, Nagpur)

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

Court's or Judge's orders

Sjhri V.D. Awachat, Counsel for the applicant,
Shri N.H. Joshi, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 03-07-2018

The applicant is in custody since 24-11-2017 in connection with Crime 483/2017 registered at Police Station Wadi, District Nagpur for offence punishable under Section 302 of the Indian Penal Code.

2. The deceased Jitu left his house at 9-45 a.m. on 19-11-2017 after receiving a phone call from his friend Yogesh. Since he did not return home, at 11-30 a.m. or thereabout his father-who is the complainant, tried to call Jitu but the call went unanswered. Jitu's dead body was discovered in the morning hours of 20-11-2017 at Defence Garden, Wadi. The applicant came to be arrested from Nashik on 24-11-2017.

3. The material which is pressed in service by the learned Additional Public Prosecutor Shri N.H. Joshi to oppose bail is (a) the statement of witness/s that the deceased Jitu was last seen alive in the company of the

applicant at 10-30 a.m or thereabout at Defence Garden, (2) that blood stained clothes and shoes were seized from the bag of the applicant at Wadi Police Station, and (3) that the applicant absconded and was not traceable till 24-11-2017. In the passing, my attention is also invited to the statement of Ritesh which is to the effect that he left the applicant and deceased at the Defence Garden at 10-30 a.m. and the applicant had said that he would kill Jitu.

4. The learned Counsel for the applicant would submit that the time of death of Jitu is not certain. The last seen theory cannot be invoked, is the submission. The learned Counsel would submit that for the last seen theory to be invoked the prosecution must *prima facie* establish that the deceased was seen in the company of the applicant and that the time gap between the last seen and the incident is so less that it would be virtually impossible for any other person or factor to be responsible for the death. In so far as the seizure of the clothes and the shoes is concerned, the learned Counsel would submit that the seizure is extremely suspect. The applicant was arrested from Nashik and nothing was shown to be seized at that point of time. The seizure is shown in the Police Station and from the traveling bag of the applicant. The credibility and probative value of such seizure is doubtful, is the submission. The alleged statement of Ritesh that the applicant said “मी जितूला

मारील” is too fragile a material to connect the applicant with the crime, is the submission.

5. Considering the material on record, I am inclined to allow the application. It is ultimately for the trial Court to appreciate the probative value of the seizure and whether last seen alive theory can be invoked. At least at this stage, I do not consider it appropriate to continue the incarceration of the applicant in custody.

6. The application is allowed.

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

8. The applicant shall attend the Police Station Wadi, Nagpur as and when so called upon by the Investigating Officer.

9. The applicant shall not tamper with the evidence nor shall attempt to influence the witnesses in any manner.

JUDGE