

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

CRIMINAL APPLICATION (BA) NO.1247/2017

Medhankar s/o Laxman Shirsat

..vs..

State of Mah., thr. PSO, Ansing, Taluka and District Washim

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

Court's or Judge's Order

Shri S.D. Chande, Counsel for the applicant.

Shri T.A. Mirza, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 8, 2018.

1. Heard learned counsel Shri S.D. Chande for the applicant and learned Additional Public Prosecutor Shri T.A. Mirza for the State.
2. The present applicant is arrested in connection with Crime No.136 of 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 applicant is arrested on 18.7.2017 and since then he is languishing in jail. The investigating agency has already completed its entire investigation and the charge-sheet is already filed.
4. After hearing learned counsel Shri S.D. Chande for

the applicant and after perusing the reply so also the charge-sheet, it is clear that there is no eyewitness account in the prosecution. The prosecution case is based on circumstantial evidence.

5. The circumstance, that is pressed into service against the present applicant, is the last seen theory namely deceased Santosh was found in the company of the applicant and co-accused Kamal. The dead body of Santosh was found in a Well.

6. The postmortem report shows that the cause of death is due to asphyxia due to drowning. The postmortem report also shows that when the dead body was opened, some organ was found in his stomach. Though CA Report is not received, the statements from the prosecution witnesses are clear that the deceased had drinking session.

7. Except last seen theory, there is no other incriminating evidence against the applicant. There is no motive that is attributed against the applicant. On the contrary, the motive is attributed against one Kamal, co-accused who has also made extra judicial confession with prosecution witness Sonu. Nothing is recovered at the instance of the applicant. Though learned Additional Public Prosecutor Shri T.A. Mirza for the State tried to point out that the shirt of the applicant was found on the spot, it is noted that the applicant was

arrested on 18.7.2017 whereas the shirt was seized 17.7.2017. On the said day, the applicant was not made an accused. Further, there is nothing on record to show that any prosecution witness has identified that the said shirt belongs to the applicant.

8. Looking to the aforesaid nature of evidence, the charge-sheet is already filed, and the applicant is languishing in jail, in my view, further custodial presence of the applicant is not necessary. Hence, pass the following order:

ORDER

- (a) The criminal application is allowed.
- (b) Applicant Medhankar s/o Laxman Shirsat, 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 of 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.
- (d) The observations made in the order are

purely for the purposes of deciding the application for bail and learned Judge of the Court below, who shall be ultimately conducting the Trial, shall not get influenced by any of the observations made in this order.

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

JUDGE

!! BRW !!

...../-