

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

CRIMINAL APPLICATION (BA) NO.205/2019

Mangesh Ananda Kambale

..VS..

State of Mah., thr. PSO Shirpur, Taluka Malegaon, District Washim

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

Court's or Judge's Order

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Shri A.M.Ghare, Counsel for the Applicant.
Shri S.D.Sirpurkar, Addl.P.P. for the State.

CORAM : M.G.GIRATKAR, J.

DATED : MARCH 18, 2019.

1. This is an application under Section 439 of the Code of Criminal Procedure for grant of bail.
2. Heard learned counsel Shri A.M.Ghare for the applicant and learned Additional Public Prosecutor Shri S.D.Sirpurkar for the State.
3. Learned counsel Shri A.M.Ghare for the applicant submits that there is no material against the accused. Confessional statement of the accused cannot be taken into consideration. In support of his submission, learned counsel points out a decision of the Honourable Apex Court in the case of Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence, reported at (2018)8 SCC 271. He submits that statements of some witnesses recorded by police appear to be hearsay.
4. Statement of Gajanan was recorded on 23.10.2018. Incident took place on 29.9.2018. Thus, there

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is considerable period of delay. Therefore, his statement is not reliable. Lastly, learned counsel for the applicant prays for grant of bail in favour of the present applicant.

5. Learned Additional Public Prosecutor Shri S.D.Sirpurkar for the State strongly objects the present application. He submits that Call Detail Records (C.D.R.) is on record which shows that the applicant was in constant touch with the main accused. *Prima facie*, the applicant made conspiracy with accused persons to kill deceased.

6. There is no dispute that confession of accused before police is not admissible as per Section 25 of the Indian Evidence Act. The Honourable Apex Court in the case cited *supra* also held that confession of a co-accused is not admissible against other accused.

7. Main accused Dhammapal has given confessional statement on 30.9.2018 i.e. on the next day of incident. He stated that the present applicant agreed to give Rs.90,000/- to kill the deceased out of which Rs.10,000/- was given. Though this confessional statement is not taken into consideration, eyewitnesses of incident Sau.Sangeeta and Sau. Sheetal state that they heard cry from well. They reached there. They saw accused Dhammapal and one juvenile and deceased was in well. Both the accused were throwing stones on the head of the deceased. When these witnesses tried to obstruct the main accused and convince, they told these witnesses that the deceased used to give trouble to the wife of his relatives and also raped on sister of

one of juvenile accused.

8. Statement of witness Gajanan shows that in his presence the applicant agreed to pay Rs.90,000/- to main accused Dhammapal. The said witness tried to convince accused Dhammapal not to do such act, but he did not listen. The amount stated by the accused in confessional statement and the amount stated by witness Gajanan is the same amount. It appears that the applicant is conspirator. Therefore, he is not entitled for grant of bail.

9. In view of the above, the criminal application stands rejected and disposed of accordingly

10. Needless to mention that the learned Judge of the Court below shall, while deciding matter on merits, apply its mind independently and shall not get influenced by observations made in this order.

JUDGE

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