

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

Criminal Application (ABA) No. 366 of 2019

Khalekulla Faroqui

Vs.

State Through P.S. Umarkhed Dist. Yavatmal

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

Court's or Judge's orders

Mr. D.B. Suryawanshi, Advocate for applicant.
Mr. A.D.Sonak, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JULY 8, 2019

The applicant herein has approached this Court apprehending arrest in connection with FIR dated 06/04/2019, registered against him and six other accused for alleged offences under Sections 302 and 201 R/w 34 of the Indian Penal Code.

2. The allegation made by the complainant is that the accused persons including the applicant herein were responsible for the death of her husband and they had destroyed evidence by refusing to identify and accept dead body of her husband.

3. The material on record shows that the incident is said to have taken place on 11/05/2016. The complainant has alleged that she had left her matrimonial house in Umarkhed Dist. Yavatmal and

left for Hyderabad due to continuous quarrels between her husband and the accused persons, which included her mother-in-law and her brothers on the question of property of her father-in-law. The complainant has claimed that when her husband did not call her for about two months, she became suspicious and when she came to find out about what had happened to her husband, she was informed that he was missing and that the accused had caused his death. According to the complainant, initially she did not believe the same, but later she realized that it was only the accused persons, who were responsible for the death of her husband and for disposal of his body. It is alleged that they deliberately did not identify the body of her husband, as a result of which, the police buried the body as not claimed by anybody.

4. The learned counsel for the applicant has invited attention of this Court to the fact that while the incident is alleged to have taken place on 11/05/2016, the FIR has been registered after almost three years on 06/04/2019. It is submitted that during this period, the complainant did not take any steps to approach the police or any other authority regarding her suspicion about the involvement of the applicant and other accused persons in such incident.

5. On 14/06/2019, this Court issued notice so as to ascertain the facts of the case, on the basis of

investigation that was undertaken by the police. On 24/06/2019, time was sought on behalf of the non-applicant for filing reply and considering the facts of the case, this Court had granted interim protection in the following manner.

“Hence, in the event the applicant is arrested in Crime No. 166 of 2019 registered at Police Station Umarkhed, District Yavatmal, he shall be released on bail furnishing P.R. bond of Rs.25,000/- (Rs. Twenty Five Thousand) and a surety in the like amount. The applicant shall attend the Police Station Umarkhed district Yavatmal, once a week i.e. on Sunday between 10 a.m. and 5 p.m. He shall cooperate with the investigation and he shall not tamper with the evidence or influence the witnesses.”

6. Today when the application is called out, reply is handed over on behalf of the non-applicant State, which is taken on record. In the said reply all that is stated is that pursuant to the complaint lodged by the complainant and registration of FIR, investigation is undertaken and that post-mortem was conducted on the dead body, which indicated the probable cause of death as “due to injuries to vital organs, lungs”. It is further stated in the reply that statements have been recorded during the course of investigation wherein statement of one Shaikh Ayyub, maternal uncle of the complainant, indicated that the applicant and other accused persons were indeed having a dispute and quarrel with the deceased on the question of property. On this basis, it is contended that

the custody of the applicant is necessary for further investigation. It is pointed that at least four accused persons in this case have been granted regular bail. On the basis of facts on record, particularly, that the alleged incident is said to have taken place on 11/05/2016 and the FIR has been registered after about three years on 06/04/2019, as also the fact that there is nothing on record to show that the complainant ever approached the police or any other authority before 06/04/2019, this Court is of the opinion that the present application deserves to be allowed, despite the fact that the applicant is alleged to have committed serious offences under Sections 302, 201 of the Indian Penal Code along with other accused persons.

7. Accordingly, the present application is allowed and the applicant is granted anticipatory bail on the same conditions on which ad-interim protection was granted by order dated 24/06/2019. The applicant shall continue to attend the Police Station as directed by this Court, till filing of charge-sheet and he shall continue to co-operate with the investigation.

JUDGE