

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

CRIMINAL APPLICATION (BA) NO.915 OF 2019

Dinesh s/o Kuwarsingh Mourya .Vs. State of Maharashtra, PSO, P.S.
Nandanwan, Nagpur

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

Mr. C.R.Thakur, Advocate for applicant.
Mr. S.M. Ghodeswar, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : OCTOBER 15, 2019

This is an application for regular bail.

Applicant is arrested on 24.04.2018 in connection with Crime No.298/2018 registered with Police Station, Nandanwan, Nagpur for an offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

Heard Mr. Thakur, learned counsel for applicant and Mr. Ghodeswar, learned Additional Public Prosecutor for non applicant-State.

It is the submission of learned counsel for applicant that investigation is over and charge-sheet is filed and though the charge is framed, the trial is not proceeding inasmuch as it is not fixed for evidence. It is also his submission that applicant at the most may be convicted for screening the main accused from the process of law.

Per contra, learned Additional Public Prosecutor for the State vehemently opposes the application. He submits that there is an extra judicial confession made by the present applicant to one prosecution witness; Vijay

Zavar. It is also his submission that on the basis of the memorandum statement given by the applicant, dead body of Narendra was retrieved from the place shown by the accused. He, therefore, submits that application be rejected.

First information report is lodged on 23.04.2019 by Mukesh Bhagat, brother-in-law of deceased Narendra. Mukesh reached to village Tarodi because of phone call received by him from his sister Ritu Harinkhede. His sister disclosed him that Narendra is not found to be present in his agricultural field. According to the first information report, Narendra was possessing an agricultural field adjacent to the field of one Vijay Zavar. In the agricultural farm of Vijay Zavar one Rupsingh alias Kisan Solanki used to work. According to the first information report, deceased was having acquaintance with Kisan and therefore in an expectation that he must be knowing the whereabouts of Narendra, the first informant made phone call to him however the phone call was not materialized. The first information report further states that present applicant, who is friend of said Rupsingh alias Kisan, was contacted and when Mukesh made inquiry with him he noticed that he is giving evasive replies thereby giving rise to suspicion in his mind and accordingly he disclosed the said fact to the police. According to the first information report, in his presence police made inquiry with the present applicant and that time the present applicant disclosed that deceased was having illicit relations with wife of Kisan and therefore he was done to death by Kisan and present applicant has helped him in throwing the body at an undisclosed place.

The investigation which ultimately culminated into filing of the final report shows that Narendra was done to death in presence of Meena wife of Rupsingh alias Kisan. Her statement recorded during the investigation would show that in her presence her husband Rupsingh alias Kisan has assaulted on deceased by means of sticks because he was suspected that she is having illicit relations with deceased. Her statement would show that at the time of incident, Narendra alias Raju in absence Kisan was present in his house and when Kisan returned from outside he noticed Meena was talking with deceased and that gave rise to the incident.

Statement of solitary eye witness does not show that present applicant has participated in the actual assault. Her statement would reveal that after Narendra was found to be dead, her husband called the present applicant and with his help the body was disposed of.

Statement of Vijay Zavar, to whom extra judicial confessional statement was made by present applicant, would also show that he helped the main accused Kisan for disposing of the dead body.

There is no evidence against present applicant that he participated in the assault made on the deceased nor any overt act is attributed to the present applicant when deceased was alive. Participation in the crime by the present applicant is after his death.

Looking to the aforesaid fact and when the trial is not proceeding further, in my view, the applicant can be released on bail. Consequently, I pass following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Dinesh s/o Kawarsingh Mourya be released on bail in connection with Crime No.298/2018 registered with Police Station, Nandanwan, Nagpur for an offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed to attend Police Station, Nandanwan, Nagpur once in a week i.e. on every Friday and shall mark his presence in the police station.
- (iv) The applicant is also directed to attend all dates in the Court below.
- (v) Absence on any two consecutive occasions by the applicant in the Sessions Court will give rise for the case in favour of prosecution to file an application for cancellation of bail before this Court.

The application is disposed of.

JUDGE

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