

Parmeshwar Narsingh Kasabe	..	Applicant
Vs.		
The State of Maharashtra	..	Respondent

Mr. S.V. Gavand, A.P.P. for the State.

DATED : 01ST DECEMBER, 2020.

P.C:-

1. The Applicant is charge-sheeted for the offence punishable under Section 302 read with Section 34 of the IPC. On completion of investigation in C.R. No.34 of 2016 registered with Paud Police Station, Pune Gramin, Dist. Pune, the case is numbered as Sessions Case No.358 of 2016. The Applicant is arrested on 19/02/2016 and, presently, he is incarcerated in Yerawada Central Prison, Pune.

2. The Applicant submits that there is absolutely no evidence contained in the charge-sheet to implicate him for the offence of committing murder and, he has been falsely implicated in the aforesaid offence and the charge-sheet enlist the circumstantial evidence. Barring the mention of his name in the FIR, there is no recovery at the instance of the Applicant during the course of investigation. Learned counsel also submits that no Test Identification Parade has been conducted so as to connect him to the alleged crime. He also relied upon the bail order passed in favour of the co-accused Kiran S. Kamble and claims parity.

3. Heard learned A.P.P. opposing the Application and also perused the charge-sheet with his assistance. The Complainant is one Prashant Sitarm Holkar, who lodged the complaint with Paud Police Station on 13/02/2016 alleging that the Applicant was residing with one Sheelabai and Accused No.2. It is alleged that the Applicant was suspicious that deceased Raju, brother of the Complainant was continuing an illicit relationship with Sheelabai. On account of the said suspicion, three days prior to the incident, he had thrashed Sheelabai and threatened that he will also kill Raju. She, therefore, left the house and informed the Complainant about the threat given by the Applicant. It is also stated that on 12/02/2016, the owner of a water tanker with whom the deceased was working as a helper, informed the Complainant that his brother had parked the water tanker on the

roadside and left it there. When the informant along with other persons went near the tanker and searched around the area, in a proximity of 100 meters, the body of deceased Raju was found with injuries on his body. The death of his brother was informed by the Complainant to the Police Station on 13/2/2016, which resulted into filing of the FIR. The Applicant was arrested on 19/02/2016 and initially remanded to police custody and thereafter magisterial custody. The Complainant has expressed his suspicion that the Applicant and his brother Ganpat had done Raju to death for suspecting that Raju was in relationship with his wife Sheelabai. In the supplementary statement, the Complainant modified his version and stated that the person accompanying the Applicant i.e. Kiran S. Kamble is responsible for the death of his brother and not Ganpat.

4. The autopsy report referred to several injuries on the body of deceased Raju and the probable cause of death has been opined to be cardio-respiratory arrest due to asphyxia due to hypoglycemic shock due to grievous injuries over head.

5. Perused the statements recorded during the course of the investigation. Sheelabai Kamble, the lady, who was residing with the Applicant as wife has stated that she had developed a love relationship with deceased Raju since last six months and they used to meet often. The Applicant gained knowledge of the

said relationship and, on that count, he used to abuse her and, at times, assault her. She states that on 04/02/2016, the Applicant had threatened her that he would kill both of them and also assaulted her by a belt. She states that through the police, she came to know that the body of deceased Raju was traced and she stated that the Applicant had killed Raju on the suspicion that she was having an affair with him.

6. The statements of other witnesses including Usha Holkar, Kaveri Holkar are also on the same line and are based on hearsay. Statements of Sitaram Holkar, Narsing Kasabe are also to the same effect.

7. Learned A.P.P. has relied on the statement of Ganesh Halande dated 14/02/2016 and submits that this witness has last seen the deceased in the company of the Applicant. However, when the statement is perused, the witnesses states that on 11/02/2016 at around 5.45 p.m., he noted one tanker belonging to Madhukar Marne and near the tanker, deceased Raju was having a verbal spat with two persons. One person held his collar and asked him where he has hidden his wife. Another person was standing nearby. At that time, this witness asked deceased Raju, what is the cause for the fight but he did not respond. Thinking that the matter was personal, the witness left from the spot. The witness had given the description of the clothes worn by deceased Raju and the other two persons.

However, there is no material in the charge-sheet to demonstrate that among the two persons, the Applicant was one of them. No Test Identification Parade has been conducted. The statement of Ram Halande is also to the same effect. The prosecution has made no attempt to put the Applicant for identification at the instance of these two witnesses.

8. There may be several reasons for a person to threaten another person with dire consequences. However, the burden is on the prosecution to demonstrate that this threat has resulted into its actual implementation and this will have to be done by some reliable and cogent evidence. Sheelabai has referred to the threat given by the present Applicant that he will kill her and her paramour deceased Raju and it was known in the village that they were having an affair but Sheelabai was also not a legally married wife of the Applicant and she was residing with him for the last 10 years as if she is his wife.

9. The co-accused Kiran Kamble has already been released on bail by this Court on 10/10/2017. Prima facie, since the charge-sheet is lacking in reliable evidence to connect the present Applicant to the crime in question and in the light of the fact that the Applicant is incarcerated since 19/02/2016 and it is almost four years and his attempts to secure his liberty have been turned down on earlier occasions, keeping in mind the principle that the long incarceration is unwarranted and since the

Applicant has already been detained for four years, he is entitled to be released on bail by ensuring that he does not flee the course of justice. Hence, the following order:

ORDER

- (a) The Applicant – Parmeshwar Narsingh Kasabe, shall be released on bail in C.R. No.34 of 2016 registered with Paud Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall report to the Paud Police Station once in every month i.e. on every 1st Wednesday of the month between 11.00 a.m. and 2.00 p.m.
- (d) The Applicant shall cooperate with the trial and attend the trial Court on every dates unless exempted by the Court. Consecutive defaults in

complying with the attendance would entail cancellation of his bail.

- (e) The Applicant shall provide his residential address and telephone number to the Investigating Officer.

10. The Application is allowed in the aforestated terms.

11. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.