

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

L.D.V.C. CRIMINAL APPLICATION (BA) NO. 479 OF 2020

Mangesh Ananda Kamble

..vs..

State of Maharashtra thr. P.S.O.

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

Court's or Judge's orders

Shri M.N. Ali, Advocate for applicant.
Shri M.K.Pathan, A.P.P. for State

CORAM : VINAY JOSHI, J.
DATED : 20/07/2020

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard.

3. The applicant-accused is claiming bail relating to the offence punishable under Sections 302 and 120B of the Indian Penal Code, 1860 registered at Shirpur Police Station, Distt. Washim vide Crime No. 184 of 2018. The applicant-accused claimed bail on the ground that there is absolutely no evidence against him to connect him with the crime. It is submitted that, nothing was ceased from the applicant nor the applicant was present at the time of occurrence even as per the prosecution case. It is submitted that though the earlier bail applications were rejected, however, there is change of circumstance that for more than one and half year from rejection, he is in jail and now, in current pandemic COVID-19 situation he is entitled for bail.

4. The State resisted bail by submitting that the applicant is main conspirator at whose instance co-accused have killed the deceased by pushing him into the well and throwing stones. It is submitted that co-accused were only instrumental to commit the murder whilst the applicant is the preparator of crime. Learned A.P.P. submitted that there is an ample evidence on the point of conspiracy and for that purpose he attracted my attention to the statement of one Gajanan in whose presence allegedly the deal was settled. Moreover, on the point of motive my attention is invited to the statement of one-Santosh. Besides that it is argued that C.D.R. discloses that at the date of occurrence applicant-accused are in constant touch with his executor i.e. co-accused namely Dhammapal.

5. At the instance of report dated 29.09.2018, the offence was came to be registered against the co-accused-Dhammapal and one-Pritesh who was child in conflict with law (for short "C.C.L."). It is prosecution case, that the applicant-accused has conspired with Dhammapal and C.C.L. to commit murder of Santosh and for that purpose, the contract money of Rs.90,000/- was fixed. The applicant has strongly objected to the statement of Gajanan on the point of impossibility of hatching conspiracy in presence of somebody else, and more particularly, delay of one month in recording his statement. It is a matter of trial to believe or not, the evidence on the point of conspiracy, but the fact remain that after one month from the lodgement of F.I.R. the statement of Gajanan came to be recorded.

6. On last date this Court has heard the matter at length and adjourned vide order dated 06.07.2020 for the reasons that, the prosecution sought time to demonstrate the ingredients of the Section 120B of the Indian Penal Code. Admittedly, no additional material is shown, but the statement of Gajanan and C.D.R. were pressed into the service. The copies of C.D.R are produced on record but they are required to be proved in accordance with law.

7. Both Dhammapal and C.C.L. who were seen to have committed the murder were came to be arrested. The role of the applicant is of preparator of crime for which there has to be evidence of conspiracy. No doubt, there cannot be a direct evidence on the point of conspiracy which is matter of inference to be drawn on the basis of several circumstances. Generally, conspiracy is being hatched in secrecy and therefore, the statement of Gajanan which is recorded after one month from the occurrence has to scrutinized with caution.

8. On the point of motive the statement of Santosh is shown. It has come in his statement that Dhammapal explained to Santosh that the deceased used to bother to the wife and sister of his relatives whose name has not disclosed. Moreover, another reason is that, the C.C.L. stated that deceased has raped to his sister. Firstly, there is no specific name of applicant mentioned. Moreover, Dhammapal and C.C.L. have stated their own cause for the incident. Already investigation is complete and charge-sheet has been filed long back on 27.12.2018. Though earlier bail applications were rejected, for considerable period, there is no progress in the trial and the applicant-

accused is in jail for more than two years. The current pandemic situation is one another major change of circumstance to which one has to give regard. The trial will take its own time for disposal in accordance with law. At present, only urgent matters are being taken in trial Courts. Judicial note can be taken that at present from last three months, the evidence is not being recorded in the Courts. One can not predict how far such situation would prevail.

9. Considering the totallity of circumstance, and the difficult pendamic situation of COVID-19, I deem it appropriate to release the applicant on bail, therefore following order is passed :

- (a) The Bail Application is allowed.
- (b) The applicant-accused namely Mangesh Ananda Kamble is released on interim bail on his furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.
- (c) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
- (d) The accused shall provide his residential address and cell number to concerned Investigating Officer.

(e) The Bail application is disposed of accordingly.

10. This order be communicated to the Counsel appearing for the parties, either on the email address or on WhastApp or by such other mode, as is permissible in law.

Trupti

JUDGE

**Rakesh
Dhuriya**

Digitally signed
by Rakesh
Dhuriya
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2020.07.21
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