

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

Criminal Application (BA) No. _____ of 2020 (LD-VC No. 65 of 2020)

*[Nasir Khan S/o Aziz Khan and anr. Vs. State of Maharashtra through P.S.O., P.S. Dabki Road,
Dist. Akola]*

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anil S. Mardikar, Senior Advocate with Shri N. R. Tekade,
Advocate for the applicants
Mrs. M. A. Barabde, APP for the State/non-applicant

CORAM : M. G. GIRATKAR, J.

DATE : 30/07/2020

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

2. Heard learned Senior Advocate Shri Mardikar for the applicants. He has submitted that there is no material evidence to connect the accused with alleged crime. He has pointed out statement of Raju Ramdas Yadav, previous husband of deceased. As per his statement, he has lastly seen the deceased in the month of August and as per the case of prosecution, incident took place in the month of October, 2019. Therefore, it cannot be said that it is last seen evidence against the accused. Learned Senior Advocate has submitted that police has recorded memorandum of accused under Section 27 of the Indian Evidence Act that accused persons have shown the spot where dead body was found. Learned Advocate has submitted that as per the record, police had already

known the spot. Therefore, it cannot be a statement under Section 27. Learned Senior Advocate has submitted that there is no *prima facie* case against the applicants, therefore, prayed to release them on bail. Learned Senior Advocate has pointed out order of this Court dated 29-6-2020 and submitted that both the applicants are on interim bail.

3. Heard Mrs. Barabde, learned Additional Public Prosecutor for the non-applicant/State. She has submitted that there is sufficient evidence against the applicants. At last, she prayed to reject the bail application.

4. From the perusal of charge-sheet, it appears that there is no eye witness to the incident. Deceased was wife of Raju Ramdas Yadav. She had been to Delhi. She resided there for some period. One of the accused went to Delhi and he also resided at Delhi. In the month of August, they left Delhi to come to Mumbai. Incident took place in the month of October, 2019 at Dabki Road, Akola. Therefore, it cannot be said that it is the last seen evidence. From the perusal of record, it appears that police had already seen the dead body on spot. All these material point out that circumstantial evidence is not sufficient to connect the applicant with alleged crime. Hence, interim bail granted on 29-6-2020 is hereby confirmed on condition that the applicants shall not tamper the evidence of prosecution witnesses and they shall attend the trial Court on each and every date.

5. The application is disposed of.
6. This order be communicated to the Counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

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