

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

CRIMINAL APPLICATION (BA) NO.1150/2019

Namdeo Jagoji Bhoge .vs. State of Maharashtra through PSO P.S.
Gadchiroli, Dist. Gadchiroli.

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

Court's or Judge's orders.

Mr. M. N. Ali, Advocate for applicant.

Mr. N. R. Rode, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 07, 2020

Heard Mr. Ali, learned counsel for applicant and Mr. Rode, learned A.P.P. for non applicant-State in extenso. Also perused in detail the entire charge-sheet, which is placed on record and the reply filed on behalf of prosecuting agency, who opposed this application for bail.

2. The applicant, who is a teacher by profession, is arrested on 21.07.2019 in connection with Crime No.350/2019, registered with Police Station, Gadchiroli, for an offence punishable under Sections 302, 201 and 34 of the Indian Penal Code (IPC).

3. Dead body of a woman was found to be floating in river Pora by Kiran Kowase. He then gave an intimation of the same to one Tulshiram Kowase. They firstly tried to identify the dead body. However, in vain. They subsequently reported the said fact to Police Station, Gadchiroli. On

receipt of such an information, Accidental Death No. 49/2019 was registered and the inquiry was entrusted to PSI Shivraj Kadam, who visited the spot of the incident. The police party also noticed presence of one two wheeler having registration No. MH-33/U-1607, an Activa scooter. The dead body was identified by Santosh Appalwar to be of his unmarried sister, Chandraprabha.

4. PSI Kadam then lodged a report on behalf of the State against unknown person for committing murder of Chandraprabha vide crime No.350/2019 for an offence punishable under Sections 302 and 201 of the IPC. During investigation of the said crime, relations of the applicant with the deceased were revealed that in spite of he being the married one, he kept extra marital relations with the unmarried woman. He was, therefore, arrested. After arrest, as per the charge-sheet, on 22.07.2019, the applicant took out key of the scooter from house of deceased vide seizure panchanama which is at running page no. 91 of the record.

5. From statement of Sonali, wife of the applicant, it is crystal clear that applicant and deceased were in love with each other. Not only that, Sonali was required to leave her matrimonial place and started residing at her paternal place and was required to file proceedings for claiming maintenance from applicant. Her statement would reveal that the competent Court directed the applicant to pay an amount of Rs.15,000/- by way of maintenance to Sonali.

6. According to learned A.P.P., illicit relation of the applicant with deceased is an incriminating circumstance. I am afraid that this particular submission alone could permit further detention of the applicant in jail. Having extra marital relations with the deceased is one thing and whether there was any complicity of the present applicant in committing murder of the deceased with whom applicant was having extra marital relations, is another thing. The prosecuting agency must keep some incriminating material on record, at least prima facie, to connect the applicant with the crime.

7. In the aforesaid backdrop, statements of three witnesses recorded by the investigating officer, in my view, assume importance particularly in view of the fact that final report is filed under Section 173 of the Code of Criminal Procedure by the investigating officer not only against the present applicant but against one Sharad Kasture.

8. There is a statement of one Rupa. Her statement would reveal that she is maternal aunt of the deceased. As per prosecution case, date of death of Chandraprabha is 15.07.2109 and after two days, her decomposed body was noticed by Kiran Kowase.

9. Statement of Rupa would reveal that on 15.07.2019, when she was proceeding for weekly bazar in the evening, she found that a white Scooty was coming. The

said scooty was being plied by the deceased Chandraprabha and one unknown person was sitting as a pillion rider. Her statement would reveal the description of the said pillion rider as under:

“तिच्या मागे लहान डोळे असलेला जिन्स पॅन्ट घातलेला व
डोक्यास सेंदरी रंगाचा दुपट्टा बांधलेला पुरुष होता.”

10. In this prosecution case, accused no.2 is absconding and final report is lodged against him under Section 299 of the Code of Criminal Procedure. Obviously, therefore, there could not be test identification parade by the investigating officer at the hands of the prosecution witnesses to identify the said pillion rider.

11. Statement of Rupa would reveal that prior to two months when she received a phone call from the deceased, she disclosed that she lent Rs.55,000/- to one Sharad Kasture. Obviously, Rupa must not be knowing Sharad Kasture otherwise she would have disclosed his name as a pillion rider. In her statement, she raised suspicion against Sharad that he must be the pillion rider.

12. There is another statement of one Santosh Gota. His statement would reveal that on 15.07.2019, at 8.30 in the night, he found presence of one Sharad Maharaj in the house of his father. That time, he was wearing blue coloured full pant and white shirt on his person and was

having a dupatta of saffron colour. He noticed that that time his clothes were fully wet and were mud stained. The statement would reveal that on inquiry, said Sharad disclosed to Santosh that he has performed “Siddhi” (a black magic) and he asked to connect him to one Moreshwar Chalkh. Accordingly, Santosh Gota, from the cellphone of his son, contacted Moreshwar Chalkh on his cellphone. As per Santosh’s statement, Sharad through his conversation with Moreshwar asked him to pick him. Thereafter, as per his statement, said Moreshwar came and he took Sharad along with him. From the statement of Santosh, it is clear that Sharad is involved in black magic.

Statement of Santosh is duly corroborated by Moreshwar Chalkh.

13. During investigation, the investigating officer has also collected CDRs. According to the investigating agency, cell number of absconding accused Sharad is 8459490327 whereas cell number of applicant is 9404933060 and cell number of deceased is 9284923875. The CDRs are the part and parcel of the challan, which show that on 15.07.2019, at about 09.00 O’clock in morning, there was a telephonic conversation between the deceased and absconding accused Sharad. Also, there was telephonic conversation between the two at 15.14 hrs. and 15.40 hrs. and also on 16.30 hrs. That shows that lastly, the deceased was in contact with Sharad at 16.13 hrs. on 15.07.2019 and the deceased was seen by Rupa at 05.00 O’clock in the evening.

14. The CDRs of deceased's cell number does not show that there was any phone call from the applicant to the deceased and vice versa.

15. Noticing of keys of scooty belonging to the deceased in her own house, at least prima facie, in my opinion, is not an incriminating circumstance since noticing of the keys in her own house will be the most natural. Further, pointing out the place where the key was found by the applicant can also, in my opinion, at least prima facie is not an incriminating circumstance, in view of the fact that the applicant was admittedly having illicit relations with the deceased and he used to overstay in her house which required the applicant's wife to file maintenance proceeding against him.

16. As per the post mortem report, cause of death is "Cut throat injuries". Column no.17 of the post mortem report would show that deceased's neck was cut by a sharp weapon. During his Police Custody Remand and/or during the investigation, nothing was found against applicant that he has used any sharp weapon and/or any weapon is recovered at his behest.

17. In the conspectus of the above discussion, in my opinion, only because the applicant was having extra marital relation with deceased, alone is not sufficient to incarcerate

him further in absence of any admissible evidence against him. That leads me to pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Namdev Jagoji Bhoge be released on bail in connection with Crime No. 350/2019, registered with Police Station, Gadchiroli, for an offence punishable under Sections 302, 201 and 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.
- (iii) Applicant is directed to attend Police Station, Gadchiroli once in a month till culmination of the trial.
- (iv) Observations made in this order are purely prima facie in nature and made for deciding the present application. The learned Judge before whom the trial will be conducted need not get himself influenced by any of the observations made in this order.

The application is disposed of.

JUDGE