

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

Criminal Application (BA) No. 181 of 2021

[Gajanan @ Mithun s/o Khanduji Popalwar ..vs.. The State of Maharashtra through P.S.O., P. S.
Darati, Dist. Yavatmal]

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

Court's or Judge's orders

Mr. R. M. Daga, Advocate for the applicant
Mr. N. R. Rode, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 30-09-2021

The applicant is seeking bail in connection with Crime 115/2017 registered with Police Station, Darati, District, Yavatmal for the offences punishable under Sections 302 and 201 of the Indian Penal Code.

2. The prosecution case is that dead body of an then unidentified girl, aged 20 years, was discovered, 100 meters from the Village Kurali to Dhanki Road within the forest area of Narali Beat. The naked body was half buried and covered with stones. She was bludgeoned to death with stones and her face was mutilated. She was killed on 28-11-2017 and since the body was substantially decomposed, she was buried on 9-12-2018.

3. During the investigation, the role of the applicant in the murder surfaced. It transpired that the deceased was in a relationship with the applicant and she was pregnant. The deceased was a resident of Palghar within the jurisdiction of Police Station, Virar. It is the case of the prosecution that when the brother of the deceased learnt of the relationship and the pregnancy, he berated her and she left home at noon on 27-11-2017 and went to the accused who also resides at Virar in connection with his work. The deceased insisted that the applicant marry her. The mother of the applicant did not take kindly to the relationship. The mother of the applicant reminded him that he was already facing accusation of raping a child and it was only six months prior that bail could be secured. The applicant allegedly told the deceased that both will go to Village, Lingati, Tah. Zari Zamni, District Yavatmal or Baldi, Tahsil Umarkhed, District Yavatmal, which is the native place of the applicant, and would reside there. The applicant lured the deceased to Lingati, switched off their respective mobiles, removed the sim cards, came to Kurali Phata

and took the deceased for a walk in the jungle area. The deceased was taken at or about 2 Kms inside the forest, near the bridge of a canal, undressed and then bludgeoned to death. The body was concealed under a pile of stones. The applicant allegedly concealed the blood stained clothes under the stones, wore fresh clothes and then went back to Mumbai, only to return at the spot of the crime on 2-12-2017 to perform the third day ceremony by offering *biryani* to the departed soul which was the favorite dish of the deceased.

4. Mr. Daga would submit that the applicant is in custody since 11-12-2017 and that there is no direct evidence, and, the circumstantial evidence on which the prosecution is basing the accusation, is too, fragile to warrant further incarceration.

5. In rebuttal, learned Additional Public Prosecutor Mr. Rode would submit that there is more than ample *prima facie* material to raise a strong suspicion that it is the applicant who has committed the brutal murder, and at this stage, such strong suspicion is more than sufficient

to deny bail. Mr. Rode would submit that the applicant allegedly killed the deceased while he was on bail, after incarceration of seven months in custody, on the allegations of raping a child. Mr. Rode points out that Crime 181/2016 is registered against the accused under Section 376 of the Indian Penal Code and the relevant penal provisions of the Protection of Children from Sexual Offences Act.

6. I have given anxious consideration to the submissions canvassed by the learned counsel Mr. Daga and the rebuttal thereof by the learned Additional Public Prosecutor Mr. Rode and having done so, I am not inclined to exercise discretion in favour of the applicant.

7. It may not be appropriate, particularly since the prosecution case is based on circumstantial evidence, to minutely evaluate the alleged incriminatory material and to make any definite observation. However, since the thought process, underlying the rejection of bail will have to be indicated, brief reasons are in order.

8. The applicant and the deceased are residents of Virar, Mumbai. The scene of crime is a forest area within the territorial jurisdiction of Umarkhed Tahsil which is the native place of the applicant. The material on record is sufficient to *prima facie* establish that the applicant and the deceased were in a relationship and the deceased was pregnant. The continuous contact between the applicant and the deceased is *prima facie* established. The statements of the friends of the applicant further *prima facie* substantiate the prosecution version that on the third day of the killing, even before the body was discovered, the applicant went to the scene of the crime with *biryani* and when his companions came searching, he returned empty handed. The explanation which the applicant gave to his companions was that he was performing the ritual to get rid of evil spirit ('Shani' in vernacular). I am consciously refraining from delving deep in the material lest the applicant is prejudice in the trial. Suffice it to record that there is sufficient material to *prima facie* connect the applicant with the murder and destruction of evidence.

9. The trial ought to have commenced, considering that the applicant is in custody since 11-12-2017. It is not clear why the trial has not commenced. However, considering the gravity of the accusations, and particularly, the fact that the crime is allegedly committed by the applicant while he was released on bail in connection with offence of raping a child, the incarceration in itself will not be a circumstance in favour of the applicant, for the purpose of consideration of bail.

10. The trial Court is, however, requested to frame the charge within the next 30 days, if not already framed, and to proceed with the trial and conclude the same as expeditiously as possible, and in any event, within the next nine months.

11. If there is no significant progress in the trial in the next four months, the applicant shall be at liberty to approach this Court again for grant of bail. The liberty is subject to the condition that the applicant brings this order to the notice of the leaned trial Judge within the

next 7 days and the delay in trial, if any, is not attributable to the accused.

12. Subject to the liberty reserved, the application is dismissed.

JUDGE

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