

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

CRIMINAL APPLICATION (BA) 207/2021

Mahendra S/o Chandrabhan Khillare

-VERSUS-

State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Anil Mardikar, Sr. counsel assisted by Shri S. G. Joshi,
Advocate for applicant.

Mrs. S. S. Jachak, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATE : 25.03. 2021.

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

2. Applicant Mehndra Khillare had applied for regular bail before the Sessions Court vide Criminal Bail Application No. 249/2020, however it was came to be rejected vide order dated 19.09.2020 which has occasioned him to approach this Court for regular bail. Besides usual grounds, learned counsel for the applicant primarily argued on the point of inadequacy of material to detain accused behind bars. The State resisted bail vide reply – affidavit wherein prosecution story in brief has been narrated.

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3. At the instance of report dated 09.06.2020 lodged by Police Patil namely Smt. Manisha Jadhav, the Poilice Station Buldhana (City) registered crime vide Crime No. 503/2020 for the offence punishable under Sections 302, 201, 120(B) read with Section 34 of the Indian Penal Code. The entire report of informant Smt. Manisha is based on heresy information. She stated that accused No. 1 – Leela had illicit relations with accused No. 2 – Anil. Since husband of Leela namely Ganesh came in between love affair Leela and Anil, decided to eliminate Ganesh. Accordingly, both of them hatched conspiracy of which applicant – Mahendra and one co-accused Arun were part. She stated that on 25.05.2020 in pursuance of conspiracy, applicant Mahendra took deceased Ganesh to predetermined place i.e. at village Hatedi. Co-accused Anil and land owner Arun arrived there. At said place, poisonous substance was administered to Ganesh which was brought by co-accused Anil. It was found that despite administering poisonous substance, Ganesh did not die therefore, with the aid of handkerchief of applicant – Mahendra, Ganesh was strangulated and buried in the said agricultural land.

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4. With the assistance of both sides, I have gone through the entire police papers. The Police are mainly relying on the circumstance namely seizure of motorcycle at the instance of applicant, finding of scarf near dead body, some extra judicial confession and CDR Report. Besides, there is no material against applicant, which is not dispute.

5. As per prosecution case, applicant took Leela and her husband on his motorcycle to the place of occurrence. While applicant was in Police custody, at his instance, motorcycle was came to be seized by drawing Panchanam in terms of Section 27 of the Evidence Act. Unless there is nexus of seized motorcycle with the crime, this cannot be termed as incriminating material against applicant. Then prosecution took through some extra judicial confessions that too made by co-accused Leela. For instance, I was taken through statement of Dhiraj Jadhav to whom allegedly extra judicial confession was made. Firstly one has to understand that this is not extra judicial confession of applicant/accused but it is of co-accused. Minute perusal of statement of Dhiraj Jadhav discloses that initially Leela has confessed him about the conspiracy. Then Leela disclosed before the Police that applicant Mahendra took

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Ganesh and Leela on motorcycle at the place of occurrence. However, bare perusal of the statement discloses that latter discloser was to the Police Officer, hence its admissibility is in question.

6. The last limb of resistance is about electronic evidence in the form of CDR. It was a bid to show that on crucial date and time, the applicant was in constant touch with the co-accused Leela. In order to establish the conspiracy, said material has been collected since there could be no direct evidence on the point of conspiracy. Learned APP pointed towards some portion of CDR (Page No. 271) to show that in the evening on 25.05.2019, the applicant (cell No. 9921825692) was in constant touch with another cell No. 7758942789 which was allegedly of co-accused Leela. In response to that learned Senior Counsel Shri Mardikar took me through page 99 to show that the latter SIM was in the name of one Baba Shahanur Shaha. According to him, the second number was of Baba Shanur Shaha and therefore, it cannot be presumed that applicant/accused was in touch with Leela. Learned APP pointed towards statement of Baba Shananur Shaha who stated that he was having love affair with Leela. Hence, he gave his SIM Card to Leela. It is a disputed question which is to

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be established through evidence. Even if it is assumed that they had a talk at relevant time i.e. one of the bit of circumstance which has to be appreciated in context with rest of the circumstantial evidence.

7. Admittedly, case is based on circumstantial evidence. The law in this regard is fairly well settled that the prosecution has to establish all the circumstances beyond reasonable doubt which would exclude the every hypothesis regarding innocence of accused. It appears that through the various statement made by accused, the entire prosecution case has been built. As per Police papers, dead body was recovered at the instance of co-accused. The poisonous substance was purchased by other co-accused. Though it is alleged that scarf of accused was used in strangulation, however, mere finding of one scarf, which does not have its own identity, no inference can be drawn. There is no material to show that anybody has seen applicant carrying victim or approaching to the place of occurrence. Having regard to all these circumstances and as the investigation is already complete, it is not a case where the accused can be detained further more. In view of that, following order:

(I) Application is allowed.

(II) Applicant– Mahendra S/o Chandrabhan Khillare is released on bail on furnishing P.R. Bond of Rs. 50,000/- with one surety of like amount.

(III) The accused shall provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

(IV) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

Gohane.