

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

CRIMINAL APPLICATION (BA) NO. 258/2021

Mithun S/o Suresh Koche

-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 R. H. Badhe, Advocate for applicant.
Mrs. S. S. Jachak, APP for non-applicant/State

CORAM : VINAY JOSHI, J.

DATE : 23.04. 2021.

Hearing was conducted through Video
Conferencing.

2. The applicant is claiming regular bail in Crime No. 674/2020 registered with Police Station, Saoner, Tah. Saoner, Dist. Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. Learned counsel for the applicant submitted that there is considerable delay in lodgment of First Information Report (FIR) and merely on suspicion, he has been falsely implicated. It is argued that though the Police recorded statement of one Salman stating that

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after incident, he met the accused, however according to him, it was a planned witness. Learned counsel for the applicant took me through the impugned order to impress that the Sessions Court has considered the inadmissible material while rejecting bail. The State has strongly opposed this application by filing reply-affidavit. It is contended that the mother and sister of deceased were consistently informed by deceased that at relevant time, he was with applicant. Learned APP took me through the discloser statement of applicant to say that he has shown the place from where the deceased failed into the river bed and consequently died. Moreover, the injuries sustained by deceased have been shown to impress that due to injuries caused by applicant, Vishal died.

4. It is prosecution case that on 11.11.2020 in the evening, deceased left his house by stating that he is visiting the house of applicant. Since deceased did not return, thrice informant and his family members contacted him on mobile to which the deceased stated that he is with applicant. Similar are the statements of mother and sister of the deceased. The prosecution is mainly relying on the evidence to last scene theory, however there is no witness who have seen

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the applicant and deceased together soon before the occurrence. At the most, the said evidence can be termed as 'last heard' material. Discloser Panchanama dated 21.11.2020 is about the place of railing from where deceased failed in riverbed and died. Much earlier dead body was recovered from said place meaning thereby, the place was within the knowledge of the Police. The Panchanama nowhere discloses any sign of struggle or any incriminating material found on the railing. Learned Trial Court was much influenced by the part of confessional statement of applicant which is totally inadmissible. Pertinent to note that as per FIR, informant and his family members were well aware that deceased went to the house of applicant, however despite finding dead body on 12.11.2020, for next five days, FIR was not lodged. AD report lodged by the father himself discloses that he was in his full senses but had not put any grievance. Having regard to the material available on record, it is not appropriate to detain applicant in jail. In view of that, following order:-

(I) Application stands allowed.

(II) The applicant/accused Mithun S/o Suresh Koche be released on bail on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties

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in the like amount.

(III) The accused/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.